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ABSTRACT

This report, one of a series of yearly reports, analyzes New Jersey school labor negotiations laws and practices as of 1979. One article deals with the school board's ability to take actions within the framework of the negotiations law. Another concerns leave provisions for illness and disability connected with pregnancy, childbirth, and child-rearing. Other articles concern bargaining tactics, impasse procedures, the changing scope of negotations (with special reference to a 1978 New Jersey Supreme Court decision), and employee grievances (with special emphasis on the "West Windsor" decision). An analysis of the New Jersey Education Association's Sample Agreement for 1979-1980 is included. Other topics touched on include management rights versus the duty to bargain, the meaning of good faith bargaining, budget caps, board proposals, negotiating committees, record-keeping, common bargaining errors, and the importance of timing. A brief bibliography lists relevant books, films, and periodicals. (Author/JM)

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Negotiations 79

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EA 011 025

Negotiations 1979

by
Bruce Taylor
Garry M. Whalen
Cathleen Otto

The New Jersey School Boards Association
P.O. Box 909, Trenton, New Jersey 08605

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Introduction

The bargaining table almost always becomes the outlet for the frustrations felt by school board members, employees and labor unions. For reasons arising from the economy, school financing, school laws, declining enrollments, violence against teachers, falling test scores or from any one of a thousand other sources, parties negotiating labor agreements sometimes possess completely different perspectives on the same exact subject.

The narrowing of these differences does not very often require a compromise of principles. There are, therefore, few absolutes in collective bargaining. How far you are willing to go is essentially a matter of individual or board conscience. Your willingness to agree on this clause or that course of action must, in the end, be colored by your own perceptions of your public obligations.

This series has reflected this non-formula approach over the years. It began as an analysis of a rigid formula-approach to bargaining - the Sample Agreement of the NJEA. Through our changing analysis and through your own experience, the Sample Agreement has faded significantly as a factor in New Jersey school bargaining.

For the same reasons that we criticized the Sample Agreement, we have resisted many requests that we publish our own Sample Board Agreement. 600 negotiating boards simply won't be served by one document - even if it is only a goal. How long should an "ideal" contract be? If you have a ten page agreement, you are probably quite pleased. Yet, some boards have two page contracts. If you have a ten page agreement you probably feel sympathy for the board with a 70 page agreement. Yet, you may have five times as many grievances a year as they do.

Formulas are dangerous in bargaining. And that is why most of the written material you read deals with legal issues - because this is the one area where, despite its complexity, we can try to chart a course. But how do we convey, for example, when silence is your best ally at the table without being with you at the table? It is exceedingly difficult.

One article here deals with your ability as a school board to take actions within the framework of the negotiations law. It is not simple reading although it may be vital to the operation of your school district. Another developing area of personnel relations concerns leave provisions for illness and disability connected with pregnancy and childbirth and child-rearing. The past school year witnessed several significant decisions in this area. And the 1978-1979 school year will see several more. An article, written especially for **Negotiations 79** by NJSBA Assistant Counsel Nathanya Simon, reviews this complex topic.

There are articles on bargaining tactics, impasse procedures, the ever-changing scope of negotiations, and new articles, written just as this book was going to the printer, on scope of negotiations (after the New Jersey Supreme Court's decision in **Ridgefield Park**) and on employee grievances (after the **West Windsor** decision). And there is our annual analysis of the NJEA Sample Agreement.

We hope **Negotiations 79** is useful to you as you seek to provide the best education possible for our children while at the same time you negotiate with representatives of your employees.

Bruce Taylor
Director of Labor Relations

The Scope of Negotiations

Perhaps no other issue in collective negotiations has received more attention this year than the scope of bargaining. Problems concerning the "permissive" topic of negotiations and conflicts arising between a board of education's duty to manage the educational operation of its district and its obligation to bargain over terms and conditions of employment have occurred since early 1975. On August 1, 1978, the New Jersey Supreme Court, in a landmark case involving the Ridgefield Park Education Association and the Ridgefield Park Board of Education [1] struck down the permissive category by reaffirming its earlier decision in the **Dunellen Trilogy.** [2] In **Dunellen,** the Court interpreted C.303 to find that only two categories of topics for negotiations existed: required and illegal. Required subjects were terms and conditions of employment that intimately and directly affect the work and welfare of public employees and on which negotiated agreements would not significantly interfere with the exercise of basic management prerogatives concerning government policy. Illegal topics included all major educational policy decisions and management prerogatives. The New Jersey Supreme Court further clarified the illegal category of negotiations in another case, where it found that public employers **cannot** negotiate over topics which are specifically set by other statutes or administrative regulations [3] if such negotiations contravene either the statute or the regulation.

The permissive category of negotiations resulted from an interpretation by the Public Employment Relations Commission (PERC) of the 1975 amendments to the public employee bargaining law. Holding that these amendments expanded the scope of what could voluntarily be negotiated and arbitrated, PERC had classified matters that were not terms and conditions of employment, yet not precluded from negotiations by statute, as "permissive" topics of negotiations. Items such as class size, involuntary transfer, curriculum and the budget were ruled as permissive subjects of negotiations by PERC and some lower courts.

Permissive items were not mandatorily negotiable, but could be negotiated if both parties wished to do so. If a board did not want to discuss a permissive subject, it was not necessary for it to do so, and a union's insistence on negotiating on a permissive topic to a point of impasse, would have been considered an unfair practice. If the parties had agreed to a permissive topic in their contract, they were bound by that agreement. PERC had ruled in several cases that disputes concerning violations of permissive topics were arbitrable if otherwise arbitrable under the parties' contract.

In **Ridgefield Park,** the New Jersey Supreme Court disagreed with PERC that the C.123 amendments authorized a permissive category of negotiations. Noting the difference between the process of "collective bargaining" authorized in private sector law and the "collective negotiations" authorized in New Jersey's statute covering public employees, the Court found that there are inherent limitations to the bargaining authority of public employers and public employees. The Court, in **Ridgefield Park,** went on to say that the community involvement necessary to a thorough and efficient system of public education, as defined in the Public School Education Act of 1975 (C.212), would be thwarted by allowing decisions concerning educational policy to be made at the bargaining table.

Thus, there now exist only two categories of negotiations: mandatorily negotiable terms and conditions of employment, and non-negotiable items of governmental policy. Unless an item intimately and directly affects employees' terms and conditions of employment, and a negotiated agreement would not significantly interfere with management prerogatives regarding the establishment of governmental policy, it is non-negotiable and non-arbitrable. Contract clauses concerning

1 Ridgefield Park Education Association v. Ridgefield Park Board of Education, _NJ_ (1978).

2 Dunellen Board of Education v. Dunellen Education Association, 64 NJ 17 (1973).

3 State of New Jersey v. State Supervisory Employees Association, State of New Jersey v. Local 195, IFPTE, and Local 518, SEIU, _NJ_ (1978).

non-negotiable items are **ultra vires** and unenforceable. The Court in **Ridgefield Park** stated that PERC has the clear and exclusive authority to determine scope issues and will, therefore, be given the task of reviewing contract clauses over which disputes concerning negotiability exist.

It is most likely that many districts have negotiated contracts which contain items which were formerly permissive subjects of negotiations. Are all permissive topics now illegal? Should a board continue to administer contract clauses on permissive topics? What is the obligation to negotiate concerning the **impact** of a non-negotiable item on terms and conditions of employment? Can the union grieve the impact of such matters? Should a board policy be substituted for current contract clauses concerning permissive topics? These questions and others concerning current contracts and negotiations for successor agreements are now being studied. It is not recommended that boards totally repudiate all permissive topics in their current contract because these clauses are legally unenforceable, nor should boards necessarily adhere to illegal clauses because they contractually agreed to them. **There is no need for boards to actually seek to remove illegal clauses from existing 1978-1979 agreements. They are not binding even if included in the contract.** Topics should be reviewed by each district on an issue by issue basis, based upon each district's educational goals and needs. Questions concerning this area should be fully explored before action is taken. The NJSBA suggests that boards seek advice from their board attorney, professional negotiator, NJSBA field service representative or the Labor Relations Department in trying to determine appropriate courses of action.

The following items have been held to be required subjects of bargaining by PERC or the courts under Chapter 123 (remember, you must negotiate concerning these if demanded by the union; you do not have to concede unless you desire to do so): [1]

Compensation
Custodial duties
Disciplinary procedures for employees
Duty free lunch period
Evaluation procedures
Fair dismissal procedures
Grievance procedures
Holidays
Hours
Impact of most permissive decisions (see Illegal topics below)
Impact of RIF decision on remaining teachers
Impact of RIF decision on riffed tenured teachers consistent with 18A
Insurance
Job security (for employees not covered by tenure statute)
Length of collective bargaining agreement
Lesson plans, teacher possession of
Payment for accumulated sick leave upon retirement
Past practice clause
Personal leave
Physical working facilities
Posting procedures for vacancies
Procedures for promotion and selection of department chairmen
Procedures for the selection of summer employees
RIF and recall procedures for tenured teachers which are consistent with 18A
Safety issues
Tuition reimbursement
Vacations
Work load
Work day, length of
Work year, length of [2]

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1 If a panel of the Appellate Division takes a position opposite PERC, the court position is the one listed here.

2 This is generally mandatory for public employees, however, for teachers it is mandatory only to those days in excess of the 180 minimum required for state aid.

The following items were determined by PERC or the lower courts to be permissive topics of negotiation. However, the New Jersey Supreme Court's decision in **Ridgefield Park** which struck down the permissive category will most likely render these issues illegal and unenforceable: [3]

Absenteeism and the tardiness policies; however, discipline aspects of the policies are mandatory
Academic calendar
Affirmative action plans
Assignments
Audiovisual equipment, use of
Budget formulation
Class size
Contact time for students
Curriculum
Decision to assign cafeteria, corridor, playground, bus supervision
Decision to reschedule snow days in teacher vacation period
Decision to go to split sessions
Facilities relating to the educational process
Lesson plans, format of
Preference on substitute list for riffed tenured teachers
Productivity studies
Qualifications for employment
Qualifications for promotion
Qualifications for summer school employment
Staffing, number of employees, manpower levels
Student safety
Student testing
Sunshine bargaining
Transfer
Use of teacher aides

The following items have been specifically held to be illegal by PERC or the courts under Chapter 123 (remember, any agreement on an illegal subject is invalid and unenforceable). [3] It should be noted that it is likely that issues once determined to be permissive may now fall in this category:

Agency shop
Decision to RIF
Early retirement incentives
Evaluation criteria
Extended sick leave
Impact of RIF decision on riffed nontenured teachers
Maintenance of membership
Pensions
Procedures for riffing and recalling nontenured teachers
Procedures for riffing tenured teachers which do not adhere to Title 18A
Seniority provisions inconsistent with 18A
Student grievance procedures
Withholding of increments [4]

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3 If a panel of the Appellate Division takes a position opposite PERC, the court position is the one listed here.

4 Two recent panels of the Appellate Division have reached conflicting decisions on the negotiability of withholding of increments. The New Jersey Supreme Court has granted certification to hear one of these cases, and their decision will be a final determinant as to whether withholding of increments is required or illegal. Until that decision is made, we advise you not to agree to provisions which limit a board's authority to withhold salary increments for cause or subject the withholding of increments to the grievance/arbitration provisions in your contract.

Balancing Management Rights and the Duty to Bargain

In the last year, PERC has issued a number of decisions that have addressed the issue of the employer's authority to act unilaterally on required and permissive topics of bargaining. These cases have not made crystal clear the extent of the employer's negotiations obligation in all cases. They are also significantly affected by the decisions of the New Jersey Supreme Court in **Ridgefield Park** [1] and the **State of New Jersey** [2] cases on the scope of negotiations (see **The Scope of Negotiations** earlier in this publication). The exact impact of the Court's rulings is not clear in every area involving the employer's authority to act as defined by these earlier PERC cases. The latter cases do, however, outline some of the principles that will govern this area of labor law under C.123, and help in analyzing the implications of the recent Supreme Court decisions.

Required Subjects of Bargaining

The cornerstone of any labor relations system is the employer's duty to negotiate in good faith over required subjects of bargaining. The legal and practical meaning of good faith bargaining is addressed elsewhere in this publication, as is the definition of required subjects of bargaining.

PERC has issued, through case decisions, some general rules governing how the concept of good faith bargaining over required topics applies in actual negotiations.

1. Where there is a contract in effect, the employer cannot unilaterally change terms and conditions of employment covered by the contract. A union does not have to agree to reopen negotiations during the term of a contract upon the demand of the employer to change a term and condition of employment covered by that contract. Without that agreement by the union, the employer is precluded from making the proposed change. This is true for terms and conditions implicitly covered by the contract under a "past practice" or "maintenance of benefits" clause, as well as for items covered by specific language in the contract.

2. Upon the expiration of a contract, the employer must maintain all terms and conditions of employment defined by that contract during the period of negotiations for a successor agreement, up to the point of genuine impasse. The Supreme Court recently ruled, in a case involving the **Galloway Township Board of Education** [3] that this mandates payment of the salary increment provided under the expired contract to teachers who return to work in September before a successor labor agreement has been reached.

3. Upon reaching a genuine impasse, defined as exhaustion of statutory impasse procedures, i.e. mediation and factfinding, and subsequent fruitless negotiations, an employer may impose his last offer on all remaining items. The negotiations obligation continues in effect. [4]

4. An employer is obligated to negotiate proposed new rules or modifications of existing rules governing working conditions before they are established, even if the contract is silent on the issues involved. If the employer announces an intended change in working conditions not covered by the contract and the union fails to request negotiations over a long period of time, the union may be deemed to have waived its right to bargain, and the employer would be free to implement his changes. However, the filing of an unfair practice charge by the union alleging a

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1 Ridgefield Park Education Association v. Ridgefield Park Board of Education, _N.J._ (1978).

2 The State of New Jersey v. State Supervisory Employees Association/The State of New Jersey v. Local 195, IFPTE and Local 518, SEIU, _N.J._ (1978).

3 Galloway Township Board of Education v. Galloway Township Education Association, _N.J._ (1978).

4 City of Jersey City and Local 246, Jersey City Public Employees, Inc., PERC No. 77-58, 3 NJPER 122.

refusal to bargain in good faith will be considered a demand to negotiate by PERC. [5] The standards for finding a refusal to bargain violation by PERC in cases such as this have not been clearly defined as of yet. They will likely center, as in other refusal to bargain cases, on the employer's "totality of conduct": was the union given clear notice of the intended change, with adequate time provided before the scheduled implementation for meaningful negotiations? [6] Or did the employer attempt to implement the decision surreptitiously, or withhold notice of the intended change until such a short time before its scheduled implementation as to preclude effective negotiations? Decisions will be rendered on a case by case basis, and the existence of an emergency forcing the employer to act quickly will be a relevant item for PERC's consideration.

5. If the employer announces an intended change in a term and condition of employment not covered expressly or implicitly by the contract during the term of the agreement, and the union demands negotiations, the employer must comply. Likewise, if the employer desires to change a term and condition not covered by the contract and demands that the union negotiate on that topic, the union would be obliged to so negotiate. The employer's authority to unilaterally implement a change in a term and condition of employment not covered explicitly or implicitly by the contract during the term of that contract is apparently subject to the requirements on **genuine impasses**, described above. A genuine impasse during such negotiations presumably could occur before the expiration of the existing agreement. The reluctance of PERC to assign neutrals to mid-contract disputes may mean a modification of the standards outlined in **Jersey City** (see footnote 4, this article).

Illegal Subjects of Bargaining and Impact Negotiations

It is still uncertain exactly how the Supreme Court decisions, which narrowed the scope of negotiations by eliminating the permissive category of negotiable topics, will affect the employer's authority to act unilaterally. The treatment PERC accorded the employer's authority to act regarding permissive topics was significantly different from that accorded required subjects. It was intricately involved with **impact negotiations**, of course. By describing how PERC ruled in the past regarding these concepts, one can see the areas where the effect of the Court cases is obvious and immediate, and those where it will take a long period of analysis and further litigation to provide clear answers.

6. Topics previously found to be permissive because they dealt with major educational policies and management prerogatives are now apparently illegal topics for negotiations.

The parties are prohibited from collectively negotiating on these matters, and an agreement reached on an illegal topic is invalid and unenforceable. A demand to negotiate an item which is an illegal subject of bargaining constitutes a refusal to bargain in good faith.

7. Where parties now have a contract which contains clauses on permissive topics, (and those permissive topics are now considered illegal) those clauses are invalid, and neither party can be forced to abide by the provisions of such clauses. Neither can a party be forced to enter into binding arbitration on such clauses. It is not illegal for a board **voluntarily** to decide it will abide by the terms of "permissive" clauses in its contract, by either implementing them through administrative directive, by adopting them as board policy, or through some other means. It would be illegal for a union to demand to negotiate over whether a board will abide by formerly permissive contract clauses.

8. The effect of the Supreme Court's scope cases on PERC's "decision/impact" theory is difficult to assess. PERC had long held that the employer must negotiate upon demand over the impact of a permissive decision upon terms and conditions of employment prior to implementation of the permissive decision. The decision itself was not mandatorily negotiable; its impact upon terms and conditions of employment was.

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5 New Brunswick Board of Education and New Brunswick Education Association, Inc., PERC No. 78-47, 4 NJPER 4040.

6 See Rutgers, The State University and Rutgers Council, AAUP, PERC No. 76-13, 2 NJPER 13

While the distinction between the decision itself and its impact upon terms and conditions was sometimes difficult to discern, it was conceptually logical. In **Middlesex County College,** [7] for example, PERC recently found that class size, student testing, the use of audiovisual equipment, and the content of faculty evaluations were permissive subjects of negotiations, but that the impact, if any, upon terms and conditions of employment of these topics was mandatorily negotiable.

In a few cases prior to the recent Supreme Court decisions, PERC ruled that the "decision/impact" dichotomy also applied to situations where the decision at issue concerned a matter previously ruled to be an **illegal** topic for negotiations. In **Maywood Board of Education,** [8] **Middlesex County College,** [9] and **Cinnaminson Township Board of Education,** [10] PERC ruled that the decision to RIF, the selection of employees to be laid off, and reemployment rights for non-tenured teachers on layoff were illegal topics for bargaining. But PERC further ruled that there was a variety of topics related to the "impact" of the RIF decision that were required subjects of bargaining: work hours and workload changes affecting retained employees; procedures for recall, consistent with Title 18A, of tenured employees who were laid off; provisions for restoration of accumulated benefits upon the reemployment of any laid off teacher; and other items related to the "impact" of the board's decision to RIF.

PERC will continue to apply the "decision/impact" theory to the variety of topics that were previously deemed permissive and are now, under **Ridgefield Park,** illegal subjects of negotiations.

9. In most cases involving PERC's application of the "decision/impact" theory, the distinctions were clear and the limited negotiation obligation reasonable. The major question that arose concerned the timelines for implementing a permissive or illegal decision that would impact upon terms and conditions of employment. Did a board have to reach agreement or **genuine impasse** (described earlier in this article) on all impacts before it implemented the permissive decision? Was it sufficient merely to provide timely notice to the union of the permissive decision and its scheduled implementation, and to respond in good faith to a union demand to negotiate, whether or not impact negotiations successfully concluded before the implementation of the permissive decision? Did the existence of an external force which was pressuring the employer to make the permissive decision, such as overcrowded classes leading to a decision to implement split sessions, affect the duty to bargain over impacts prior to implementation? PERC decisions illustrate that the practical application of the "decision/impact" dichotomy is more difficult than its theoretical explanation.

In a case involving the **Edison Township Board of Education,** [11] PERC ruled that an employer's decision to alter the student calendar to make up instructional days lost due to inclement weather was a permissive topic and did not have to be negotiated. Under the "decision/impact" theory, one would expect that the impact upon teachers' terms and conditions of employment, e.g. work and vacation schedules, would be a mandatory topic of negotiations. PERC found, to the contrary, that changes in the teacher work year were necessitated by changes in the school calendar in order to meet the board's required educational responsibilities, the scheduling of at least 180 days of student instruction. Such changes in the teachers' work schedule, to reach the 180 day minimum, therefore, were not subject to mandatory negotiations, "either as a direct change in terms and conditions of employment or as the impact of the board's educational policy decision necessitated by the lost snow days".

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7 Board of Trustees of Middlesex County College and Local, 1940, American Federation of Teachers (AFL-CIO), PERC No. 78-13, 4 NJPER 4023.

8 Maywood Board of Education and Maywood Education Association, PERC No. 78-23, 3 NJPER 375.

9 Board of Trustees of Middlesex County College and Local 1940, American Federation of Teachers (AFL-CIO), PERC No. 78-26, 3 NJPER 383.

10 Cinnaminson Township Board of Education and Cinnaminson Township Education Association, PERC No. 78-46, 4 NJPER 4039.

11 Edison Township Board of Education and Edison Township Education Association, PERC No. 78-53, 4 NJPER 4070.

The board was found not guilty of a refusal to bargain in its decision to cancel one scheduled holiday that had occurred prior to the PERC determination, and two others scheduled for the immediate future. PERC stated, however, that upon the request of the union the Board would be required to negotiate over other impacts the rescheduling decision had upon teachers, such as lost vacation deposits, job opportunities, etc.

Such negotiations need not, as stated above, involve the actual change in the days but rather would be limited to ways to ameliorate the effects of these changes on employees. [12]

In another case, [13] PERC ruled that a board's decision to switch to split sessions was a permissive decision; the Commission further ruled that although "the decision necessarily affected teachers' terms and conditions of employment, that fact does not change the right of the Board to make the decision."

"The Association would have us find a violation because hours, workload and other terms and conditions of employment were changed. As stated above, we acknowledge that there were changes in terms and conditions of employment which, in the abstract, were mandatorily negotiable. But that does not change the fact that the Board's decision itself was not mandatorily negotiable nor that. . . the Association did not request negotiations regarding the impact of the Board's decision until shortly prior to implementation."

Two aspects of the case are critical: the external factors forcing the board to go to split sessions; and the failure of the union to demand negotiations for an extended period of time. On the first point, the board had lost access to a facility it had rented the previous year to accommodate a large student population. Like the **Edison** case, the board had to make and implement its decision, despite the impact on teachers' working conditions, in order to meet its required educational responsibilities: the operation of the district. Regarding the second point, PERC notes that the union had notice in February that the intended change would be effective in September, and made no demand to negotiate impact until August. The board's implementation of the split session schedule in September was not a refusal to bargain despite the fact that negotiations had not reached an agreement at that time. Nor had impasse been reached.

Even with these caveats, however, it appeared from **Edison** and **Warren Hills Regional** that PERC was making a distinction, at least in some cases, where **external pressures** were forcing the employer to act. In these cases, involving snow days and the loss of a building, the "necessary" impacts upon terms and conditions of employment attendant to the implementation of a permissive decision were not themselves mandatorily negotiable. In **Warren Hills Regional**, the board did not have to negotiate the fact that teachers' schedules would now be adjusted to the split session system instituted for the students. The required impact negotiations in these cases concerned other terms and conditions of the teachers who were affected by the permissive decisions.

The union demands in **Warren Hills Regional**, for example, seemed to accept as inevitable the teacher scheduling changes that accompany a decision to go to split sessions, and centered instead on ways to ameliorate the effects of that decision. They included demands that no teacher be assigned more than five periods of instruction per day, that split session teacher assignments be made by seniority, that the length of teaching periods for all teachers in the district be uniform, that teachers from one split session who were asked to substitute during the other session receive extra pay and that all teachers on split sessions be paid an additional $3,000. The board only agreed to extra pay for split session teachers who substitute in the other session, and PERC held that it had bargained in good faith over the impact of its permissive decision.

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12 The board subsequent to this decision refused to negotiate over these "impacts" arguing, among other things, that lost vacation deposits and job opportunities, and disrupted family plans, were not terms and conditions of employment within the meaning of the Act. PERC did not agree and held that the board, regarding its refusal to negotiate regarding the impact of its permissive decision to alter the student calendar, violated Sections 5.4 (a)(1) and (a)(5) of the Act, **Edison Township Board of Education and Edison Township Education Association**, PERC No. 79-1, _NJPER_.

13 **Warren Hills Regional Board of Education and Warren Hills Regional Education Association**, PERC No. 78-69, 4 NJPER 4094.

PERC apparently viewed the demands of the Warren Hills Regional Education Association as pertaining to the impact of the decision to institute split sessions, rather than related to the educational decision itself, and thus they were required subjects of bargaining. If the union demands were such that, if met, they would have precluded the implementation of the board's educational decision (e.g. "no teacher shall work split sessions") perhaps PERC would have viewed them differently.

A recent PERC decision has clouded this interpretation of the "decision/impact" theory. [14] In this case a board of education determined that a remedial reading program was needed in the district, and that the program would be implemented by eliminating the current seven period schedule, and establishing eight periods of shorter duration. The beginning and ending times for the school day would not change but there would be an increase in pupil contact time per teacher, an increase from five to six teaching periods per day, and a slight decrease in preparation time.

PERC ruled that the decision to go to an eight period student day is permissive, but the impact upon teachers regarding pupil contact time, number of teaching periods, and other workload factors are mandatorily negotiable. The distinction between this case and **Edison** and **Warren Hills Regional** may be based on two factors. The **Lincoln Park** Board was under no external pressure to make these changes as were the other boards. More significantly, PERC stated that "the Board's decision as to the reading program and the number of student periods does not dictate the number of teaching periods". Unlike **Edison** and **Warren Hills Regional**, the permissive decision in this case does not, in PERC's view, "necessarily affect" teachers' terms and conditions of employment, so that any changes in terms and conditions must be negotiated before they are implemented.

The exact manner in which the Supreme Court cases will affect "impact negotiations" decisions by PERC is unclear at this time. Employers still have a duty to negotiate in good faith over terms and conditions of employment and proposed new rules or modifications of existing rules governing working conditions before they are established. The Supreme Court noted, however, that the "essential components" of terms and conditions of employment are working hours, compensation, physical arrangements and facilities, and customary fringe benefits (see **State of New Jersey**, footnote 2, this article). The Supreme Court further provided a quite narrow general definition of required topics:

> *"Thus, negotiable terms and conditions of employment are those matters which intimately and directly affect the work and welfare of public employees* and *on which negotiated agreement would not significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of governmental policy."*
> (emphasis added).

The exact meaning of this sentence will be determined on a case by case basis by PERC and the courts. A literal reading, however, implies that the exercise of management prerogatives by public employers may not be frustrated by the obligation to negotiate. It is conceivable that certain matters, although traditionally considered terms and conditions of employment, will be deemed illegal in some situations. Related clauses would then be ruled unenforceable, if a negotiated agreement on them "would significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of governmental policy."

One must recognize, however, that the obligation to negotiate the impact of an educational policy decision upon terms and conditions of employment will not disappear. At the very least, public employers will have to negotiate with unions over ways to ameliorate the effect of the implementation of a decision on an item outside the scope of negotiations.

The standards for good faith bargaining in the context of the Supreme Court cases and PERC's "decision/impact" theory will likely be the major subject for labor relations litigation in the near future.

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14 Lincoln Park Education Association and Board of Education of Lincoln Park, PERC No. 78-88, 4 NJPER 4131.

State Law and Union Waivers

There are two other relevant considerations when determining if an employer has the authority to change terms and conditions of employment.

A. **State Law.** If the State Legislature enacts a statute which requires a term and condition of employment, the board must make that change. They are relieved from the obligation to negotiate. Likewise, if a court finds that a contract clause illegally curtails board discretion on a matter covered by law, the board may thereafter refuse to enforce that contract clause. A clause which provides an illegal benefit to employees, such as the right to accumulate more than 15 days sick leave per year, cannot be enforced by the board.

B. **Union Waivers.** The board may retain its right to act without negotiations on required subjects of bargaining in a number of circumstances:

I. **Where the union has expressly given up its rights in the written agreement.** For example, the union may agree to this clause: "During the term of this agreement, the Board may make changes in the health insurance coverage of employees consistent with the economic needs of the district." This specifically frees the board to make unilateral changes in health insurance coverage.

II. **Where the union fails to achieve certain gains in negotiations.** Often, the union will bring specific demands to the bargaining table which they abandon during the course of negotiations. For example, the union might seek a clause prohibiting the board from scheduling faculty meetings without two days notice, and then drop the demand. The board could thereafter argue that it has the right to schedule such conferences without negotiations. This is distinguishable from those terms and conditions which are, implicitly or expressly, covered by the contract, or which are not covered by the contract but over which there have never been discussions or negotiations; without the latter there could have been no union waiver.

III. **Where, during negotiations, the union expressly agrees that the employer can change terms and conditions unilaterally.** In a decision [15] recently affirmed by the Appellate Division court, PERC ruled that a State of New Jersey union agreed to allow the State to change meal and mileage reimbursements when it set a cut-off date for negotiations on these two items. The union went to mediation and fact-finding on many other issues but severed these topics from the normal impasse procedures.

Summary

Before attempting to make a unilateral change in an item affecting employees, the employer should do the following:

- Check PERC and court decisions defining the item as a required or illegal subject of bargaining. As indicated above, items previously deemed permissive will now apparently be considered illegal topics for negotiations.
- Look for limitations in the present contract in either specific or general clauses.
- Notify the union in as timely a fashion as possible of the intended changes so that, if any negotiations obligation exists, it can be met in an effective manner.

Remember that the board's legal rights to take unilateral actions affecting employees is still being defined by PERC and the courts, and in many areas remains unclear.

Remember also that negotiations is a very valuable problem-solving mechanism. Significant changes in district operations can usually be implemented amicably if both parties operate honestly and constructively. A board's technical legal rights to take unilateral action in certain cases can be useful in negotiations, but it should not become a blockade to productive discussion with employee organizations over matters of mutual and legitimate concern.

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15 The State of New Jersey and Local 195, IFPTE and Local 518, SEIU, PERC No. 77-40, 3 NJPER 78.

Employee Grievances

The negotiation of a contract is only one part of the bargaining obligation. Labor unions and employers constantly engage in the various elements of administration of the completed agreement.

When the Supreme Court addressed the whole range of public sector labor relations in August, 1978, it devoted a good part of its attention to **grievability**. It settled some long-standing differences of opinion over the Employer-Employee Relations Act and it raised new issues.

1. **What May Be Grieved**

In **West Windsor**, [1] the Court clearly held that employees have the right to appeal the interpretation, application, or violation of policies, agreements, and administrative decisions affecting them. The phrase "affecting them" is interpreted to mean "terms and conditions of employment". Thus, an employee has a statutory right to present a grievance alleging that any policy, agreement or administrative decision which sets a term and condition of employment has been misinterpreted, misapplied or violated by the board or its agents (supervisors). For example, if the board has a policy on mileage reimbursement, any employee in the bargaining unit must be able to grieve an alleged violation of that policy. This is true even though the matter (a term and condition of employment) is not set in the labor agreement.

Employers under **West Windsor** do not have the right to present grievances on matters which are not terms and conditions of employment. For example, because curriculum is not a term and condition of employment, employees have no right to grieve over changes in curriculum.

2. **What Grievance Procedure Is Required?**

The Court very clearly noted that this right of an employee to grieve is limited to an ability to **present** grievances at the first step of a procedure. According to the Court:

> *The procedural details of the grievance mechanism remain negotiable and are to be set by the negotiating parties. We agree with PERC that the parties are free to provide for a significantly narrower definition of the matters which are grievable beyond the initial presentation stage. Moreover, the decision whether to utilize binding arbitration as a means for grievance resolution is a procedural detail left to the parties to adopt or reject as the terminal step of the contractual grievance mechanism. The parties are free to agree to arbitrate all, some, or none of the matters as to which the employees' right to grieve is guaranteed by N.J.S.A. 34:13A-5.3.*

The Court also endorsed PERC's earlier view (and that of the NJSBA) that different types of grievances could be submitted to either different grievance procedures or could end at different levels in the same procedure. For example, a board might only agree to allow grievances over administrative decisions and policies affecting terms and conditions of employment to be grieved at the board level and go no further. Grievances over the express terms of the contract might go on to arbitration.

Again, the right to present grievances established in West Windsor only goes to the initiation stage of a grievance procedure. Such matters as time limits on filing, how many steps are involved and whether a matter is arbitrable is a required subject of negotiations.

3. **Statutes and Grievance Procedures**

In **West Windsor**, the Court also interpreted C.123 as requiring that employees

1 Township of West Windsor v. Public Employment Relations Commission and P.B.A. Local 130, _NJ_ (1978).

be able to grieve the interpretation, application or claimed violation of any statute or regulation which sets terms and conditions of employment.

Some statutes in Title 18A (and other related Titles) set terms and conditions of employment by establishing minimum levels of benefits (such as ten days sick leave), maximum levels of benefits or a specific benefit. Administrative agencies, such as the State Board of Education, set regulations pursuant to law. Some of these regulations set terms and conditions of employment. For example, evaluation regulations set some terms and conditions that PERC would have found to be negotiable.

Although the full implications of **West Windsor** are not clear, employees must have some right to grieve **at the initiation level** alleged violation of these statutes and regulations by the board. Again, boards can submit these grievances to a different procedure or can stop them short of arbitration. Moreover, boards cannot violate these statutes or regulations, and arbitrators (if arbitration is agreed to) may not cause boards to do so.

It will take further study and litigation to complete our understanding of what portions of statutory and regulatory provisions may be grieved. Boards should proceed cautiously in this area. **Most importantly, any arbitration agreement should be thought out and should expressly state what may be arbitrated.** (The express terms of the contract? All policies, agreements and administrative decisions affecting terms and conditions of employment? All alleged statutory and regulatory violations? Everything which affects terms and conditions?)

4. **The Union's Right to Grieve**

The Court, in **Red Bank Regional**, [2] also addressed whether the union has a right under C.123 to present grievances and whether it may negotiate away that right.

Public employees cannot be limited to presenting their grievances personally. The Court said:

> *The statute must be read as according the majority representative, by virtue of its status as the constitutional representative of the unit employees, the right to initiate an organizational grievance when requested to do so by a unit employee who claims that he has been aggrieved by an action of the public employer.*

The Court went on to say that a union could not waive this right to initiate grievances, through negotiations.

Some boards have successfully negotiated that while a union could process grievances, some proof of the employees' consent be given. The Court struck down such limitations stating:

> *Nevertheless, it is important to note that the question of consensual initiation of any organizational grievance would not be a legitimate matter of concern for the public employer. Its obligation to accept organizational grievances is not conditioned on its verification that the affected employee has consented to the filing of the grievance. So far as it is concerned, all organizational grievances are consensual.*

5. **Summary**

A. Employees have a right to present (file) a grievance at one step over an employer's alleged incorrect interpretation, application or violation of policies, agreements and administrative decisions, statutes and administrative regulations setting terms and conditions of employment.

B. This right goes only to the initiation of a grievance. Different types of matters may go to different grievance procedures.

C. Some grievances may be arbitrable while others stop at the board level.

D. The union has a right to process grievances on behalf of employees without proving to the employer that employees desire the grievances to be processed.

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2 Red Bank Regional Education Association and Red Bank Regional High School Board of Education, _NJ_ (1978).

Grievance Procedures After the Court Decisions

In the preceding article we reviewed the key holdings relating to grievances and arbitration arising from **West Windsor**. There and in our commentary on the NJEA Sample Agreement we have urged you to do two things:

1. Negotiate separate grievance procedures for different types of grievances or negotiate a different last step for different types of grievances.

and

2. If you do agree to binding grievance arbitration, very precisely define **what is arbitrable.**

"Multi-track" Grievance Procedures

Both PERC and the Supreme Court have gone to great lengths to inform public employers that the Employer-Employee Relations Act guarantees **only** that employees and their majority representatives have the right to **present** a grievance over the interpretation, application or violation of policies, agreements and administrative decisions affecting them.[1] "Present" means there must be at least a one-step procedure. **Anything** beyond one step is negotiable locally.

It seems sensible to limit grievances on "policies and administrative decisions" to a procedure ending at the board level. For example, any bargaining unit employee could file a grievance at the first step (the principal, perhaps) and have it proceed through the superintendent (second step) to the board. This would be the third and final step for all grievances where there was no grievance arbitration. Even where there is arbitration, it would be the final step for grievances relating to "policy and administrative decisions". In those cases where there is grievance arbitration as the fourth step, only alleged violations of the **specific** terms of the contract itself could be submitted to arbitration.

The Arbitration Clause

Some boards have or will agree to submit certain disputes to an arbitrator for resolution. There is no requirement to have arbitration over **any** dispute. And if you do agree to arbitrate, you may send as many or as few matters to arbitration as the parties agree on across the bargaining table. Generally, boards have sought to limit arbitration to disputes over the specific terms of the agreement.

Because "policies and administrative decisions" are now grievable and state **statutes** and administrative agency **rules and regulations** are also grievable [2] boards should avoid agreements that would tend to result in arbitration of all of these matters.

In order to limit what may be arbitrated, the contract should contain an express limitation such as the following:

> *The only grievances which may be arbitrated are those based upon an allegation that there has been a violation of the express terms of this agreement.* [3]

State Law, Rules and Regulations

In the **State of New Jersey** decision, the Court stated that the parties may negotiate to include administrative agency appeal procedures as the terminal step in the grievance process for certain laws and rules. [4] For example, employees have had a

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1 For a full discussion of the meaning of the phrase "affecting them" see the preceding article.

2 Again, at least at a "**presentation**" level.

3 Other limiting language would include time limits on filing and traditional language limiting the powers of the arbitrator. The phrase "express terms of the agreement" necessarily excludes statutes and regulations setting terms and conditions of employment from the arbitration clause.

4 These laws and regulations described must apply to terms and conditions of employment.

right to appeal board decisions through a Commissioner of Education - State Board review procedure (Controversies and Disputes). Now, according to the Court, those same procedures may be included as a final step in the grievance procedure. [5]

A board which desires to have alleged violations of these statutes and administrative rules and regulations reviewed by the Commissioner and State Board might then specifiy that express contract violations would be arbitrated; alleged violation of statutes and rules affecting terms and conditions would go through Commissioner/State Board review procedures; and alleged violations of policies and administrative decisions would go to the board level. There would then be three separate terminal steps for three kinds of grievances.

The board does not have to agree to include these other review procedures in the contract. At this time (see footnote 5) it is uncertain what would happen to grievances on these types of matters.

Summary

The board should carefully weigh all elements of the grievance procedure. The only requirements are that:

1. You have a grievance procedure.
2. It be written and placed into the contract.
3. It allow employees or their representatives to appeal the interpretation, application or violation of policies, agreements and administrative decisions affecting them (terms and conditions of employment).
4. That you negotiate in good faith on all other elements of the procedure.

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5 The Court said that the parties must "expressly" agree to include these review procedures in the contract. This raises the possibility that these procedures are not available to the employee unless actually included in the negotiated agreement.

The Meaning of Good Faith Bargaining

1. The determination of whether a school board and an employee organization have bargained in good faith will have to be made on a case-by-case basis.

The standard used to determine whether the parties have bargained in bad faith revolves around one question: Does the bargaining which has taken place indicate that one or both parties came to the negotiations table with no desire to reach a mutual agreement on the contract? The question is easy to ask, the answer is a good deal harder to provide. Unless a party has absolutely refused to meet with and discuss negotiable issues with the other side, the Public Employment Relations Commission must analyze the entire course of bargaining and reach a decision. The difficulty is that no one position can serve as an indicator of bad faith bargaining, and PERC's investigators will not be equipped with motivation machines capable of revealing the true intentions of a party when it entered bargaining. The "totality of conduct" approach, as it has been called, will involve these observations, among others: Did a party refuse to meet at reasonable times to negotiate? Did a party seek extensive postponement of meetings? Did a party refuse absolutely to discuss the other side's proposals?

Boards should be assured that they have the right to maintain positions sincerely held. In a private sector case that reached the federal court level, the court noted: *"The employer may have either good or bad reasons for insistence on the inclusion or exclusion of a proposed contract term. If the insistence is genuinely and sincerely held, if it is not mere window dressing, it may be obtained forever though it produces a stalemate."* And that leads to the next point:

2. The obligation that a party bargain in good faith does not require the party to make a concession on any specific issue.

If one party makes a demand, the other side is not required to make some movement toward that position. For example, the union may demand dental care. The

board has estimated the cost of dental care and decides that its cost would be prohibitive. The board rejects the union's demand. The board does not have to offer a modified dental plan to meet its obligation to bargain in good faith. The board might respond that a dental plan would be acceptable if there was a concurrent lessening of the salary increase or if certain other changes could be made in the terms of the contract, but even these actions are not required by law.

Quite clearly, the object of both parties at the bargaining table should be to reach a mutually acceptable agreement. Suce a goal is not inconsistent with the well-established principle that no party can be forced to concede on a point it believes unacceptable. The appearance of bad faith bargaining increases, naturally, as one party rejects more of the other side's demands outright. But a realistic analysis of bargaining situations in public education in New Jersey would reveal very little bad faith bargaining on the part of boards of education.

3. The obligation of the union to bargain in good faith is no different than the obligation of the board to do so.

As more boards learn that counter-demands and counterproposals are critical parts of their bargaining position, those boards are constantly accused of bad faith bargaining by the unions with which they are negotiating. Such charges indicate a basic misunderstanding of the bargaining process by unions. In fact, the obligation of the board to fairly consider the proposals of the union is no greater than the union's obligation to fairly consider the board's proposals. And boards are not limited to reacting to the demands of the union. They may, and should, make initial proposals to change contract terms in order to alleviate unacceptable burdens placed upon them by the current contract or to clarify certain language in the contract. Counterproposals and board demands have a rightful place in the bargaining process.

Caps and Negotiations

They are with us again and will remain a very large problem in school district financing for the foreseeable future. In addition, the 1979-1980 school year could see tightened state aid because of projected shortages in State revenues combined with inflationary growth.

The downward trend for caps contrasts with an upward trend in the cost of living figures. This tug-of-war will be reflected at the bargaining table. Both sides now possess excellent arguments for their respective positions. Caps are real; the cost of living is real. It can be anticipated that conflict over wages and fringe benefits will increase, rather than decrease.

Multi-Year Contracts

The early settlement of negotiated agreements can be, in certain circumstances, highly beneficial to the district. Multi-year agreements provide the opportunity to put most negotiations problems to rest.

The most common approach to multi-year contracts is to provide greater increases in compensation in the second and/or third year of the agreement than in the first. In some cases, the district anticipates increased revenues in those years. In other cases, boards might simply be postponing tough prioritizing in the budget.

Budget caps will decrease on average from 1978-1979 to 1979-1980. They may very well decrease or remain constant in coming years. Multi-year contracts that keep the district within the cap in the 1979-1980 school year but push it beyond those caps in the succeeding years will require diversion of funds from other budgetary areas.

Contract Language and Caps

As caps intensify the difficulty of granting compensation increases, union

representatives will turn to other areas of the contract for visible gain. The continued warnings concerning contract language should still be heeded. Waiving substantive board prerogatives, especially in the areas of evaluation, renewal, dismissal and layoff, may appear to be attractive to boards because they have less money to give. The negative aspects of such contract clauses are no less in a time of strict budgetary control.

Mediation and Factfinding Implications

For many districts the cap is now the single most important factor in negotiations. It should not only be in the forefront of your negotiations approach but should also be an open element in mediation and factfinding.

Factfinding opinions and awards will be significantly different in the future if the cap is understood by both the board and the factfinder. While the factfinder can be generally informed about the cap system and its overall effects, you must present your situation in a clear and complete manner. The factfinder is not responsible to protect your interests. And while the factfinder desires an agreement which both parties can live with, he or she will not do your work for you. Preparation for factfinding should begin now even if you are not yet in mediation.

Board Proposals

There is a myth that there can be no improvement in a contract from the point of view of a board of education. We would be the last ones to claim that the board, saddled with impossible contract language, can easily or quickly modify that language. A contract clause, after all, has a certain inertia. But some boards have been able, with skill at the bargaining table, to convince unions that language modification or deletion is a fair price to pay for the board's salary, fringe benefits and language concessions.

Board proposals may not be for every district. There are districts that might benefit from one type of proposal and not from another. The success or failure of the board proposal is closely related to the board's bargaining ability, the state of the current agreement and the relationship which the board has with the unions representing their employees.

The board proposal may be met with expressions of outrage. Sometimes it is met with threats that unfair practice charges may be filed against the board. In the first part of this book, we discussed good faith bargaining. One point should be highlighted here: *the obligation of the board to fairly consider the proposal of the union is no greater than the union's obligation to fairly consider the board's proposals.*

Certain points should be kept in mind when using board demands. First, it is generally counterproductive to make as many demands as the union. Any attempt to "gut" the contract (i.e. remove substantial employee benefits) will be met by union hostility and may very well endanger negotiations. Pick a few points you wish to stress: contract provisions which have created difficulties for your administrators and contract language which has resulted in lost arbitration awards. Second, you will not win every demand the first time out. If you are serious about your demands, if you explain your position to the union, and, most importantly, if you tie your concessions to union concessions on your own demands, you will make some progress. You will also set the groundwork for future negotiations.

At the same time you must avoid the demand on a topic you already control. If you have historically and without union opposition assigned teachers on a rotating basis to bus duty and your contract is silent in this area, it is a serious mistake to seek this "right" in the next contract. Generally, arbitrators rule that a failure by either side to attain a demand in bargaining is a waiver of that right.

In a recent arbitration case, a union argued that a board could not require a two

day notice for use of personal leave because the board had not attempted to bargain over this during negotiations. The arbitrator pointed out: "In fact, had the Board made a proposal on this issue, such action could have been construed as an admission that its right to require forty-eight hours notice did not otherwise exist."

What follow are examples of board proposals. Change them to meet your needs; add new ones to reflect desired changes in your current agreement. [1] Above all, don't let another year go by without investigating the possibility of whether board proposals can make your contracts more livable.

1. **No Strike Provision** [2] - Both parties recognize the desirability of continuous and uninterrupted operation of the instructional program during the normal school year, and the avoidance of disputes which threaten to interfere with such operation. Since the parties are establishing a comprehensive grievance procedure under which unresolved disputes may be settled, the parties have removed the basic cause of work interruptions during the period of this Agreement. The Association accordingly agrees, during the period of this Agreement, that it will not, nor will any person acting in its behalf cause, authorize, or support, nor will any of its members take part in, any strike (i.e. the concerted failure to report for duty, or willful absence from his position, or stoppage of work or abstinence in whole or in part, from the full, faithful and proper performance of the employee's duties of employment) for any purpose whatsoever. The Association may be held liable in damages for such strikes, unless the Association in writing, immediately disavows the strike and notifies the strikers to return to work.

The following clauses might be considered by the board for submission as proposals:

2. **Management Rights Clause** - The board reserves to itself sole jurisdiction and authority over matters of policy and retains the right, subject only to the limitations imposed by the language of this agreement, in accordance with applicable laws and regulations (a) to direct employees of the school district; (b) to hire, promote, transfer, assign, and retain employees in positions in the school district, and to suspend, demote, discharge, or take other disciplinary action against employees; (c) to relieve employees from duty because of lack of work or for other legitimate reasons; (d) to maintain efficiency of the school district operations entrusted to them; (e) to determine the methods, means and personnel by which such operations are to be conducted; and (f) to establish reasonable work rules; and (g) to take whatever actions may be necessary to carry out the mission of the school district in situations of emergency.

3. **Fully Bargained Provision** - This Agreement represents and incorporates the complete and final understanding and settlement by the parties of all bargainable issues which were or could have been the subject of negotiations. During the term of this Agreement, neither party will be required to negotiate with respect to any such matter, whether or not covered by this Agreement, and whether or not within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement. (This is the exact opposite of "past practice" or "savings clause".)

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1 Additional proposals and sample contract language are available from your local Field Service Representatives.

2 If you are agreeing to a binding grievance arbitration procedure you should insist on this or a similar clause.

Negotiation Committees and the Board

As with many other of its responsibilities, the local school board most often negotiates through a committee. Board members, administrators, board attorneys and professional negotiators, either individually or as teams perform the arduous task of narrowing differences and seeking compromise on the wages, hours and working conditions of school employees.

The composition of your committee is largely determined by local factors. You should use what meets your need. (See **What Every School Board Member Should Know About Collective Negotiations**, pp. 6-15)

There are some points which should be highlighted:

1. **You can use anyone you want to in negotiations.** The PERC law guarantees that both employers and unions can freely select their own negotiators. Attempting to force the other side not to use an individual as a member of the team is an unfair practice.

2. **Individual board members or administrators should not deal with contract negotiations problems unless authorized to do so by the board or its committee.** A favorite tactic of unions during negotiations is to try to approach individual board members and administrators about bargaining problems. Sometimes, the union leader will call a non-team member, assuring him or her that the union recognizes them to be "responsible" and "not like the others." If the board member is drawn into a full discussion of negotiations, a pattern of such conduct will be established. It is not wise to argue the board's position with the union leader. You may use arguments never before raised, you might find yourself contradicting your team and, worst of all, you may end up making a commitment which you cannot carry out. **Unless you are directed by the board to speak on its behalf, you should inform anyone who attempts to deal directly with you that they are violating the PERC law by bypassing your representatives.** This also applies to negotiating team members who, in a given instance, are not specifically authorized to speak for the board.

3. **Under certain circumstances, your negotiating committee can bind the entire board to a contract.** Over two years ago, PERC held that a board may be bound by the tentative agreement reached by its representatives. Part of that decision read:

> *We can conceive of no reason why the parties are not bound by the agreement reached by their representatives, and should not therefore take the remaining step required by the Act, that is, execute a formal writing representing the agreed-upon salary guide.*[1]

In this decision, the board had authorized a team to act on its behalf. That team reached a memorandum of agreement, which the board unanimously rejected. PERC said that a board of education was like a corporation's board of directors. It has long been held in the private sector that duly authorized "agents" of a party can legally bind that party. The board argued that, as a governmental entity, it can only take actions in public by majority vote. PERC rejected that argument saying that the PERC law clearly allows the employer to act through such "agents."[2]

In another case, a PERC Hearing Examiner, noting that there was no written limitation on the authority of the board's negotiating committee to reach a final agreement, held the board bound to that tentative agreement. Likewise, a union negotiating team, unless explicit notice is given to the board to the contrary, can bind the employee organization.

Can the authority of the board's team be limited? Yes. It has long been held that a party may limit the extent of authority of its agents. The best way to do so is to send a letter to the union prior to the first negotiating session.

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1 Bergenfield Board of Education and Bergenfield Education Association. PERC No. 90.

2 This issue may very well be argued in other cases before the courts of the State.

Here is a sample letter which might be sent to the union prior to negotiations:

> The Board of Education has selected the following individuals to be members of the Negotiating Committee of the Board: (insert names)_____
>
> The Board hereby authorizes this Committee to enter into discussions with (enter name of the union) concerning a successor contract for the 1978-79 school year for the unit which includes all (list the job classifications in the contract).
>
> The Negotiating Committee is directed to act in good faith on all matters relating to a successor contract. The Board of Education reserves to itself the final and ultimate authority concerning any agreement to a successor contract.
>
> The Board's position in this matter is based upon its understanding of its public obligation and its obligations under Chapter 123, Public Laws of 1974.

What should the board do then? The board's committee must have the confidence of the entire board. The committee must only make movement within the guidelines set down by the board. The committee should regularly report back to the board in closed session on the progress of negotiations. The board should not wait until the conclusion of negotiations to raise questions on tentative agreements. Board members who are on the team should never place themselves in the position of publicly voting no on the agreement. Budget defeats and State aid changes should never force a board to revise a negotiating committee's tentative agreement. This is so because no board should ever reach an agreement on salary or fringe benefits if it doesn't know where the money is coming from. That is not only good negotiating strategy, it would seem to be responsible government as well.

4. **The union has certain obligations when dealing through negotiating committees.** In a recent decision, [3] PERC held that if the union wants to reserve to its full membership the right to ratify or reject a tentative agreement it must do so clearly during the course of negotiations.

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3 Black Horse Pike Regional School District Board of Education and Black Horse Pike Regional Educational Association, PERC No. 78-83.

Record-Keeping

How could so important a thing as accurate note-taking be overlooked by school boards? A written record of every negotiating session is invaluable in protecting the board's interests.

Did the union cite the situation in the Washington School as a reason for its demand on teacher facilities? That was five months ago. I'm not sure.

Did we reach a tentative agreement on the board's new language in the extracurricular pay section? We have to prepare it for them. What was it?

This arbitrator wants to know if we intended to exclude nurses from this provision. I remember saying that we weren't including them. But when did I say it?

The answers to these questions could have been instantly available if the board kept full notes of its bargaining sessions. The notes provide a history to vital intelligent bargaining.

Some recommendations:

1. **Someone on your team should be responsible for the board's notes.**

In the heat of negotiating, things are said which mix with other things that are said to produce a very confusing situation. If possible, one person should be charged with the task of note-taking. Several qualities are required of the note-

taker: a) clear handwriting; b) an ability to be precise in writing; and, c) someone who does not get so engrossed in discussion that he forgets to record it.

2. **Keep all records of all negotiations.**

Three years ago, the union said they needed demand 23 because of improper transfer. They said that on November 15, 1975 at 11:00 a.m. the Board spokesperson denied that a transfer had occurred. The union admitted no transfer had occurred.

Last evening, a different union spokesperson made the same charge in support of the same demand. Can you see why notes of those negotiations could be useful?

The records belong to the **board**, not the individual. Keep them in the board's offices between contracts. If the note-taker is leaving the board or the board's team, ask him or her to review the notes and make them readable. Shorthand comments, especially should be fleshed out.

3. **Review previous notes before each session. Review previous years' notes before each new round.**

This will tell you where you are, remind you of the union's arguments and, maybe, refresh your memory on your own responses. Previous years' notes can tell you a great deal about the major issues coming up. Most of the last, hard-fought demands which you resisted last time may be the priority items this time.

4. **Before every grievance is answered at the Superintendent, Board or arbitration level, review the notes on the contract section(s) in question.**

Five years after a contract clause is first agreed to, you might have forgotten all of the discussions pertaining to it in negotiations. Maybe the parties stated clearly what the board contends now. In a recent PERC decision, the Commission stated: *Due to the passage of time and the fading of memories, documentary evidence is normally more persuasive than oral testimony.*

The Commission then looked at a union's bargaining notes on a point in dispute, ruled in the union's favor and found a board guilty of an unfair practice.

What would notes look like? Perhaps, something like this:

Date: *November 15, 1975*

Session Began: *7:45 p.m.*

Place: *Board room*

Board personnel/team present:
B. Johnson, board member
C. Wiles, board member
A. Stevens, Asst. Supt.

Union personnel present:
D. Royal, president
R. Casey, negotiations chairperson
E. Santiago, vice-president

Union started with their demand 13 on page 3. Royal stated they had problems with getting duplication of materials on the same day as turned in . Stevens asked where. Royal said in Coolidge School. Stevens said she would check on it and reply at next session.

Board presented union with copy of drafted language on credit union deduction. Union signed tentative agreement at 8:02.

Union caucused from 8:02 until 8:30.

Board offered counterproposal on demand 12 on page 2. Board will agree to new notice provisions in return for a withdrawl of union demands 18, 19 and 20.

Union caucused from 8:40 until 9:10. Royal stated that the union must have demand 20 but is willing to discuss the balance of the board's proposal.

There is no form for record-keeping. Perhaps you should develop one. Just remember to keep it confidential.

At the Table

Certain kinds of behavior in negotiations will almost always result in poorly bargained agreements. No single article (or even book) can assist you to avoid common bargaining errors. For that reason, we have selected a few to discuss in detail. One topic, the timing of offers, is so critical to successful bargaining that it is contained in a separate article following this one. Here are some of the more common at-the-table actions which can help or hurt your effort:

1. In almost every case it is the union which seeks a benefit or certain contract language. **Yet, few boards place the burden upon the union to justify why it must have the benefit or the language.**

"Why do we need this?" You must be ready to ask that question 100 or 1000 times. Think about what can happen as a result of that question. First, their answer can indicate that they don't even know what they're talking about. If the answer is, "Well, this other district has it," suggest that the parties deal with your district's needs.

Second, they may have a real misunderstanding about a situation. You may be easily able to correct that misunderstanding.

Third, they may have one kind of problem, and yet, made another demand. You may be able to reach an agreement on the real problem.

Fourth, you may notice a shift in the strength of a certain demand. When the first answer is "we'll strike over this" and the 50th is "we sure could use this" you know you don't need to concede on that point.

When you begin negotiations, you should seek justification item by item, asking clarifying questions throughout. Hold back positive or negative comment until a complete review. Sometimes a clause that looks harmless by itself can cause problems when combined with other clauses. You must also remember to be ready to respond with informed information to claims made about circumstances in the district.

By seeking union justification for demands you maximize the opportunity to reach quick agreement and resolve the real problems in your district.

2. If you negotiate item-by-item, you will give away more than if you **begin to package concessions.** There is a great pressure on the board to give something on every union demand. Why not make your concessions work for you? The board may be able to agree on the language in the union's third demand but in return it wants demands four and five withdrawn. Or it wants a union agreement on the board's rewarding of a current contract clause. Or it wants the union to modify its salary demand.

In order for "packaging" (as it is called) to work, the board team must hold to its own "package". When the union is sure that it will make progress to the degree it seriously considers "packages" you will find movement towards a settlement. Try it. You may be very pleasantly surprised.

Some points:

A. You can tie your concessions on some of their demands to a withdrawal of other of their demands.

B. You can tie your concessions to their concessions on unrelated demands. You don't have to put fringe benefit items only with fringe benefit items.

3. If you discuss fringe benefits, extracurricular stipends and salary only item-by-item, you will lose track of the cost of your settlement and you will give away more than if you **consider all economic items as a package.** Again, the pressure (not legal - but practical) is on you to give. What is the question the board should be asking itself? "How much will it cost us to provide the same level of educational services next year as we provide this year?" Have you ever heard the comment, "Now we'll get to the money"? It is not to the union's interest to openly recognize that all benefits cost money. Some even still play the game that increments are "old money". Fewer boards fall into that trap now.

Studies show that a public sector employee generally receives benefits costing the employer in excess of 40% over the employee's salary. In some governmental units this figure exceeds 60%. You cannot deal with employee compensation as if it only dealt with salaries.

By accurately costing out union demands, costing your current and future costs for benefits and by continually tying benefits and salary together you will, at the very least, remind yourself that all of this is "new" money.

4. It is unlikely that you can be a hero in bargaining. The union will attempt to persuade you that you are the key to settlement. Very often, this is a tactic to put pressure on your team. **Avoid the pitch for a quick settlement.** You will invite union pressure if you either show a willingness to discuss negotiations openly or you cannot restrain your actions during the course of bargaining.

In the environment of open (non-table) discussion, you may very well say things you should not reveal. Or you may say things less precisely than you would at the table. In either case you will be held to those statements later. The union will remind you of them and will try to tie your board's position to them.

Some team members never learn that mere facial expressions can give you away. A few still insist on open debate among the board's team in front of the union. Both damage the board's bargaining approach. If you can't restrain yourself, don't go to negotiating sessions. If you have a problem or a question, call a **caucus.** Failure to do these things will result in the union singling you out. Such a situation is far from enjoyable.

Timing

The step feels good. You watch the ball. Draw your racket back. Swing. And hit it firmly three feet outside of the court.

Comparisons of anything with sports is getting out of hand. We promise that this will be the only time you see it in these pages. But consider - even when everything seems right, when you go through the correct motions - still things can go wrong. In tennis. In bargaining.

Why? Some of it is luck. A lot of it is timing. A fraction off in tennis turns a Wimbeldon champ into a weekend hacker. And a mistimed offer in negotiations can result in embarrassment or worse.

Every year many boards seek our advice after they have made an offer at the wrong time. In most cases, they eventually pay for their mistake. In NJSBA's **Preparing for Bargaining** seminar, held each September, we say the following:

In negotiations, as in life, it is often not as important what you say, as how and when you say it.

Sit back for a moment and think about events in your own life. Haven't you said perfectly right things at exactly the wrong time? We all have. Negotiators must pace their statements and their concessions. Only by doing so can they hope to reach the best possible settlement.

Why do boards, knowing that a 6½% settlement is their outside limit, open negotiations at 4½% and move to 6% before the union drops below 10%? Why would a board offer a new insurance program months before any serious discussion on a salary settlement? An understanding of some of the dynamics taking place in bargaining would deter a negotiator from such bad timing.

1. **Time changes viewpoints.**

How basic and how overlooked! A simple truth is that a union will not so nearly be impressed by a 5% offer in the first session as it will be by the same offer after the give-and-take of bargaining. If you've been involved in your own negotiations, you know that some of the views you held as a board on possible settlement in October have shifted by April. The same phenomenon applies to unions.

2. **The union has certain needs.**

The union exists on the dues it collects. It must create the appearance that it is the source of all benefits. And it can only do so, in many cases, if it can "win" concessions. Boards have often been stunned when, after they have made a high

opening offer on salary, there is a quick union rejection. But what would you think if you were representing the union? Maybe: "If I can get 8% tonight, what can I get in May?" Or maybe: "If I take this back tomorrow, won't some hot-shot claim I sold out?" Or maybe: "If I accept this, my people are going to think this board is a great employer. Then what credit will I get?"

That's why many last session negotiations end at 5:00 a.m. even when everyone knows what the settlement will be at 10:00 p.m.

Please do not underestimate the value that the union puts on such needs. Failing to recognize these, you will very likely pay for your settlement with more hard cash than you had intended.

3. **Early, large offers, by definition, limit the number and size of later offers.**

You offer 4½% the first night. They lower their demand to 12%. You raise your offer to 6%. They lower theirs to 10%. You want to end at 6½%. Now in the last stages of negotiations they can create the appearance of being more conciliatory - they can make a lot more "movement" than you. (We know that this is a fallacy - they start with a number pulled from the air - and each of your offers represents real money). You have little room to manuever. You may have convinced the union that you have a lot more to offer. You've got troubles.

Space your offers. Make them in smaller increments. **Tie them to specific concessions of the union.** By doing so, you draw them closer to your position; you leave yourself room to negotiate at the end; and you increase the possibility of ending up somewhere close to where you are comfortable.

4. **Our crazy timetable increases the problems of timing.**

Starting to negotiate in October over next September's contract is misguided. Besides the fact that it leads to lengthened negotiations (many states start later than New Jersey and finish about the same time), it also leaves more time in which to make a mistimed offer. Why not start later? At the very least, give yourself a reasonable amount of time to analyze the union's demands before making offers.

Step forward, Draw the racket back. Watch the ball. Swing through. An ace? Or out again? Have you checked your timing?

Impasse Procedures

The PERC Law (Chapter 123) provides a mandatory impasse procedure which is used in the event an agreement over the terms of a successor contract has not been reached. Since public employees within the State of New Jersey do not have the right to strike, the legislature determined that a suitable alternative was needed for the resolution of any impasse which might occur during the process of collective negotiations.

In almost every state where public sector collective negotiations has been sanctioned by law, mediation and some form of factfinding is used to assist the parties in reaching settlements. Chapter 123 provides for mediation (where the mediator tries to persuade the parties); and, factfinding (where the parties try to persuade the factfinder). *

Mediation:

Mediation is the intercession of a third party neutral who attempts to help the parties reach agreement after they have come to an impasse in their negotiations.

The mediator is an advocate of the public interest who represents PERC. A MEDIATOR HAS NO AUTHORITY OR POWER TO MAKE RECOMMENDATIONS WHICH ARE BINDING ON EITHER PARTY. His function and role as a neutral

* Police/firemen are the only employees in New Jersey which have a different impasse procedure. After factfinding, if there is no resolution of the issue, the dispute is submitted to an arbitrator(s) for a binding determination.

government representative at the negotiating table is to assist and guide both parties toward arriving at a mutually acceptable compromise. He is not concerned with imposing upon the parties his own personal value judgements as to what he believes would be the most equitable agreement. It is the interests of the parties which is at stake and it is his role to encourage a settlement. The mediator is not concerned with fairness. His goal is simply to assist the parties to reach an agreement which is ACCEPTABLE to them.

If an agreement does not seem to be near during the process of mediation, the mediator may recommend to PERC that factfinding would be useful in resolving the continuing impasse. The recommendation will be in the form of a confidential mediator's report and the report will be one of the criteria used by PERC in considering whether or not the factfinding procedure should be initiated. PERC pays the mediator for services rendered.

Factfinding:

Factfinding is a process requiring both parties to gather any and all relevant objective information in order to present persuasive argument to a third party neutral who would then issue a written report and recommendations for settlement. Although the recommendations are non-binding, their release is geared toward arousing enough public opinion and news media comment to put substantial pressure upon both parties to reach an agreement within the guidelines established by the factfinder. Consistent with the view that the public, as taxpayers, has a special right to be cognizant of all the factors involved in public employee disputes and because no other adequate alternative has yet been devised, factfinding has remained alive as a governmental dispute resolution tool for public education negotiations disputes. In the past few years, the impact of factfinding has been dramatically reduced mainly because the process has become somewhat routine and addictive and public opinion has not, in most cases, rallied to the point of inducing the parties to settle. This is not to say that the process is not useful. It can be an effective method of moving parties to compromise without either side losing face if it is used to facilitate rather than replace collective negotiations.

In most cases, the initial functions of the factfinder will be analogous to those of a mediator. He will pursue a mediation role in an effort to effect a voluntary settlement without "donning his robes" as factfinder, unless of course one or both parties object to any additional mediation and insist that factfinding commence. If the latter situation occurs or the factfinder is unsuccessful in resolving the dispute through mediation, he then moves into a more formal role with the authority to make written findings of fact and to recommend the terms of a settlement. A FACTFINDER'S REPORT AND RECOMMENDATIONS ARE ADVISORY AND NONBINDING ON BOTH PARTIES. The factfinder's recommendations represent what he perceives, via the outcome of the hearings he conducts, as a predictable expectation of where the parties will reach agreement. To a factfinder, the equity of a party's position will take a back seat in favor of emphasizing recommendations which in the factfinder's judgment will be the most acceptable and receptive to both disputing parties. Factfinding is not necessarily the finding of fact as much as it is the finding of acceptability. The "facts" may not warrant a specific recommendation but the factfinder may understand, through his time with the parties and his experience, that the recommendation might well be accepted. Of course, factfinders can and do risk ignoring critical facts. This leads to unacceptable recommendations.

Chapter 123 does not contain criteria or guidelines upon which the factfinder must base his recommendation. Absent specific statutory criteria, factfinders have formulated their own criteria and tailored the application of the criteria to fit the negotiating relationship of the parties in dispute. In any event it is significant that whatever criteria is used, the parties be aware of it and present their case utilizing the same guideline the factfinder does in making his recommendation. This would involve consideration of any factors which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.

If the impasse has not been resolved prior to or during the factfinding hearing, the factfinder will then issue his findings of fact and written non-binding recommendations for settlement as soon as possible after he has declared the hearing closed.

The recommendations will be submitted to the parties privately as well as to PERC. The parties must then meet within a period of five days in order that state-

ments of position may be exchanged and an opportunity provided to reach agreement on the basis of the recommendations. EITHER PARTY MAY ACCEPT, REJECT OR MODIFY, EITHER IN FULL OR IN PART, THE RECOMMENDATIONS OF THE FACTFINDER.

In the event the impasse continues, PERC then has the authority to take whatever steps are deemed expedient to effect a settlement. The Commission may maintain a continuing role but in no case concerning issues which remain in dispute after factfinding does PERC have any authority or power to make recommendations or awards which are substantively binding on both parties. Negotiations are, therefore, considered to be "open-ended," i.e., there is no compulsory finality step in the impasse procedure for negotiating disputes involving public education.

The cost for the services of the factfinder are paid for by the parties, not PERC.

The Labor Relations Department maintains an information file on each member of PERC's panel of factfinders. In addition the staff itself has an intimate knowledge of the "track-record" of most of the neutrals on the panel. If you need assistance in selecting a factfinder from a list submitted by PERC or in the preparation of your factfinding presentation, don't hesitate to call your local Field Service Representative or the Labor Relations Department directly.

The Grievance Form

Our earlier article on Record-Keeping stressed the importance of accurate records in bargaining. The same requirement is present in the grievance procedure. A form, such as the one reproduced opposite this page, will help you track grievances, assure that timelines are met, determine the exact nature of the alleged violation and provide a procedural history later.

Our sample district has a four-step procedure (principal, superintendent, board, arbitration). In this sample procedure, only the union can take a grievance to arbitration. Modify your form to meet your own circumstances. It is probable that your own form will differ from this one and will be lengthier in order to accommodate necessary information.

Completed forms should be kept on file and discussed by district supervisory personnel. Such discussions will provide an educational tool in your contract administration.

Arbitration records (briefs, evidence, award) should be attached to the completed grievance form.

GRIEVANCE FORM

Grievance No. 78

Grievant's Name_____
Work Location_____
Job Title and Grade_____
Immediate Supervisor_____
Contract Clause(s) Alleged to Have Been Violated:_____
_____

Description of Violation:

Remedy Sought:

Grievant's Signature:_____ Date:_____

– –

Step I. Date Received:_____ Date Answered:_____

Disposition: Denied:_____ Granted:_____

Reason:

Supervisor's Signature:_____ Date:_____

I am not satisfied with the outcome of Step I and wish to proceed to Step II.

Grievant's Signature:_____ Date:_____

– –

Step II. Date Received:_____ Date Answered:_____

Disposition: Denied:_____ Granted:_____

Reason:

Supervisor's Signature:_____ Date:_____

I am not satisfied with the outcome of Step II and wish to proceed to Step III.

Grievant's Signature:_____ Date:_____

– –

Step III. Date Received:_____ Board Hearing
Date Answered:_____ Date:_____

Disposition: Denied:_____ Granted:_____

Reason:

Grievance Committee
Chairperson's Signature:_____ Date:_____

– –

The grievant is not satisfied with the outcome of Step III and the union wishes to proceed to arbitration.

Union Officer's Signature:_____ Date:_____

Maternity Leave, Childcare Leave and Sick Leave Benefits

By nature, pregnancy is a sex-related disability; but by case law, it must be treated exactly like any other disability. This seemingly inconsistent approach is a result of statutory interpretation by the Division on Civil Rights, the Commissioner of Education and the state courts. The key cases in this area are summarized below, along with some suggestions for negotiating a policy to conform with the law. Keep in mind, however, that final resolution of the legal issues in this area must await a final decision in the **Castellano** case which is presently pending before the State Supreme Court. The information which we have provided is based upon existing case law.

Some basic concepts, which are expanded upon in the article, include:

1. The definition of sick leave as found in the education laws includes pregnancy-related disabilities, and therefore, accrued and accumulated sick time must be granted to female employees claiming a disability due to pregnancy-related illness.
2. New Jersey state law does not permit the exclusion of pregnancy from a sick leave and disability policy as differentiation between pregnancy and other disabilities.
3. Neither statute nor case law requires a board of education to grant child-rearing leaves.

The Case Law in New Jersey

N.J.S.A. 18A:30-1 defines sick leave to mean the absence from employment because of "personal disability due to illness or injury." In **Board of Education of Cinnaminson v. Silver**, 1976 S.L.D. (August 17), the Commissioner of Education was called upon to decide whether a board of education was required to permit its employees to use accumulated sick leave benefits for such time as the teacher expected to be temporarily disabled due to pregnancy. In this case, the board had denied the teacher's request for such paid leave and advised that the absence due to pregnancy would have to be a maternity leave without pay.

The teacher primarily relied upon the Civil Rights Act of 1964 and the interpretations of the Act given by the regulations promulgated by the Equal Employment Opportunity Commission. The board maintained that in the absence of prior interpretation of N.J.S.A. 18A:30-1, the Commissioner should note that boards of education have not in the past permitted maternity leave to be classified as sick leave with a subsequent salary entitlement. Further, the board asserted that federal standards and constitutional rights are not applicable to a determination of an interpretation of a state statute.

The Commissioner held that the primary issue in this case was the meaning of the statutory language of N.J.S.A. 18A:30-1 and whether that statute could be considered to include disability due to pregnancy-related illness. The Commissioner concluded that there was no impediment against interpretation of the statute to favor the teacher. The Commissioner stated that it is the symptoms and not the causes which permit utilization of sick leave for employees. Therefore, the Commissioner directed the board to permit employees to utilize accrued sick leave for the period of absence from employment due to disability related to pregnancy.

Additionally, in **Cinnaminson**, the Commissioner established parameters for boards in permitting the utilization of sick leave without a detailed medical certification. The Commissioner further held that a non-specific physician's certificate (indicating only the expected delivery date) may suffice to establish disability for the ninth month of pregnancy and the month following the birth of the child. If a teaching staff member or other employee wishes to continue beyond the beginning of the ninth month of pregnancy or return prior to one month from the birth of the child, it would be within the realm of authority of the board to require a specific certificate of fitness from the employee's own physician and/or from the school's board physician.

It should be noted that N.J.S.A. 18A:30-4 provides that upon claiming of any sick leave, a board may require a physician's certificate of disability from the employee. Thus, for an employee claiming disability even within the two month

period set forth by **Cinnaminson**, it is our opinion that the board could require further medical certification attesting to the disability of the employee. From a pragmatic point of view, the board may wish to forego challenges to the fact of disability during some reasonable established period prior and subsequent to the delivery date. However, the board is certainly not precluded from requiring proof of actual disability in all cases, so long as similar proof is required regarding other disabilities.

In **Castellano v. Linden Board of Education**, 158 N.J. Super 350 (App. Div. 1976), the appellate court was called upon to decide whether a mandatory leave of absence policy for pregnant teachers and the refusal to allow utilization of accumulated sick time for absence due to pregnancy-related disabilities constituted sex discrimination. In this district, pregnant employees were required to cease employment at a certain point in the pregnancy and not return before a fixed date, without regard to medical fitness of the employee.

The Division on Civil Rights had ruled that the board's policies were discriminatory based upon the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. Particularly, the Division relied upon N.J.S.A. 10:5-12 (a) which declares it is unlawful for an employer to discriminate against an employee in "compensation or in terms, conditions or privileges of employment" on the basis of sex. The Division ordered the board to treat pregnancy the same as all other disabilities, to permit teachers to utilize their accumulated sick time for pregnancy-related disabilities, and to permit teachers to return to work after temporary maternity leaves whenever physicially able to do so. On appeal, the board cited **Gilchrist v. Board of Education of Haddonfield**, 155 N.J. Super 358 (App. Div. 1976), [1] as controlling in this case. But the court distinguished **Gilchrist** on the ground that there was no proof in that case that pregnancy had been singled out as the only temporary disability which would lead to non-renewal. In contrast, in **Castellano** the court indicated that it was clear the Linden board had singled out pregnancy in the application of its leave of absence policies. The court concluded that the mandatory leave of absence policy was discriminatory.

The court then addressed the issue of utilization of accumulated sick leave for absence due to pregnancy-related disability. The court concluded that based upon the Law Against Discrimination and the Commissioner of Education's interpretation of N.J.S.A. 18A:30-1 as stated in **Cinnaminson**, the deprivation of utilization of sick time to a pregnant teacher was discrimination on the basis of sex, as well as a violation of the state's educational laws. The board has appealed the **Castellano** case to the New Jersey Supreme Court, and that court has agreed to review the Appellate Division decision.

Some confusion may occur because of the conflicting opinions being rendered in the state courts and the federal courts. The United States Supreme Court has held that disability plans, which exclude pregnancy from coverage, do not violate Title VII of the Federal Civil Rights Act. See **General Electric Co. v. Gilbert**, 429 U.S. 125 (1976). However, state administrative and judicial bodies are free to adopt an interpretation of state statute which is stricter than the federal court interpretation of federal statute. **Thus, although federal law permits policies to exclude or differentiate pregnancy, the interpretation given to the New Jersey state laws does not permit the exclusion or differentiation between pregnancy and other disabilities.**

Some Suggestions for Boards

It is clear from the New Jersey cases that pregnancy-related disabilities must be treated exactly the same as other disabilities for purposes of granting sick leave benefits. Neither board policy nor negotiated agreement can modify the interpretation being given to New Jersey's law against discrimination (N.J.S.A. 10:5-1 et seq.) and the public school sick leave law (N.J.S.A. 18A:30-1 et seq.) in terms of maternity leaves, the utilization of sick leave and the ability to work.

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1 In **Gilchrist**, the appellate court reversed a decision of the Division on Civil Rights and held that there was no evidence of discrimination in the nonrenewal of a nontenured pregnant teacher, which was based upon a board policy of minimizing interruption in classroom instruction. The court upheld the board's right to institute such a policy and found it to be an admirable goal of a school district. The court noted that there was no evidence presented by the teacher that pregnancy had been singled out when applying the policy. Therefore, in the absence of a showing of disparate treatment, the court held that the policy was non-discriminatory.

At the same time, it must be emphasized that none of the cases require boards to grant any leave beyond the actual period of disability. Nor has any case discussed the availability of sick leave to a teacher who takes an entire year's leave of absence in order to have a child. In both **Castellano** and **Cinnaminson**, the teacher sought to use her accumulated sick leave only for the actual period of disability. No leave of absence beyond that period was requested, and the teacher sought to return to work as soon as she was able to do so.

In developing and negotiating policies, however, boards should address the question of how to treat requests by teachers for longer leaves of absence associated with pregnancy and child-rearing. In this connection it is crucial to distinguish in theory and in practice between maternity leave and childcare leave. Much confusion has arisen because existing contracts do not define these terms, or that those contracts use the phrase "maternity leave" as an all-inclusive term. **The School Boards Association recommends that the definition of maternity leave be limited to the actual period of disability due to pregnancy or a related illness.** Under the decisions discussed above, maternity leave, at least in the case of a teacher who is absent only for the actual period of disability, must be with pay to the extent of any accumulated sick leave. Conversely, childcare leave should be defined as a leave of absence without pay, available to men and women, and in existence strictly as a matter of board discretion, board policy or negotiated agreement. [2] **Neither statute nor case law requires a board of education to grant childcare leave.**

There is very little control that a board may exercise to regulate a leave of absence due solely to pregnancy-related disability. This is true for all disabilities. As long as an individual is truly disabled, and the individual has the accumulated sick time available, the board of education must provide salary during the absence. However, since childcare leave is a creature of discretion and not of statutory mandate, a board of education may stringently regulate the availability and duration of such leave. A board may negotiate for a provision which would deny any leave beyond the actual period of disability. A board may establish notice provisions whereby in order to obtain a childcare leave, the employee must give 30 or 60 days notice (or even longer). A board may require a commitment on the part of the employee to a specific date of commencement of the leave and a specific date of return. A board can require that the commencement and return dates be consistent with a policy of minimization of classroom interruption, i.e. only at certain times during the academic year. The board may determine that a childcare leave may only be taken from September to June or from September to February and February to June. A board may decide that only a certain number of childcare leaves will be given each year. A board may require board approval in order for a teacher to be granted a childcare leave. Additionally, these leaves may only be made available to tenured personnel or to employees with a certain number of years of service in the district. A childcare leave, like a sabbatical leave, is negotiable as a term and condition of employment.

It is recommended that board policies be reviewed and revised to conform with the law. Clauses in contracts should also be negotiated in accordance with the law. As a general rule, try to avoid ambiguous contract language and specifically list the rights and obligations of the employee and the board. Any unwritten policies which the board desires to retain should be reduced to writing. Any unwritten policies which the board wishes to remove, should be discussed and not reduced to writing. Keep in mind that employees returning from a maternity leave whether with or without pay are entitled to the same rights and benefits as any other employee returning from sick leave with or without pay. Whatever benefits or conditions the board sets, the primary objective should be to insure that the terms are consistently, uniformly and even-handedly written and applied.

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2 This topic is a required subject of negotiations.

A Selected Bibliography

Books and films are available to any member of a New Jersey board of education or designated individual on a free-loan basis from the association's library. Periodicals, journals and subscription pamphlets may be obtained through specific inquiry and will be sent in photographic form. Several sources are listed below. Many more are available.

BOOKS

ELKOURI, FRANK and EDNA ASPER. **How Arbitration Works.** Third edition. Washington, D.C.: The Bureau of National Affairs, c1973, 819 pp.

IGOE, JOSEPH A. and DOUGLAS M. FLYNN. **The School Board Negotiator: Guidelines for Effective Teacher Negotiations.** Albany, New York: Thealan Associates, Inc. c1972, 189 pp.

METZLER, JOHN. **What Every School Board Member Should Know About Collective Negotiations.** Trenton, New Jersey: New Jersey School Boards Association, c1976, 178 pp.

O'NEIL, ROY. **Counterproposals for School Boards in Teacher Negotiations.** Aurora, Illinois: Countersearch, c1972, 255 pp.

SIMKIN, WILLIAM E. **Mediation and the Dynamics of Collective Bargaining.** Washington, D.C.: The Bureau of National Affairs, Inc., c1971, 410 pp.

TAYLOR, BRUCE, WILLIAM A. SPENLA and JOHN BARBOUR, ESQ. **What Every School Board Member Should Know About the Public Employment Relations Law.** Trenton, New Jersey: New Jersey School Boards Association, c1976, 58 pp.

WOLLETT, DONALD H. and ROBERT H. CHANIN. **The Law and Practice of Teacher Negotiations.** Washington, D.C.: The Bureau of National Affairs, Inc., c1970, 1567 pp.

BULLETINS, FILMS, PAMPHLETS AND REPORTS

AMERICAN ARBITRATION ASSOCIATION, **Voluntary Labor Arbitration Rules of the American Arbitration Association,** New York, New York: 8 pp.

— **The Drama Coach Grievance,** New York, New York: 16 mm, 25 minutes

BARBOUR, JOHN T. "The Scope of Collective Negotiations in the Public Sector Under L. 1974, C.123," **Seton Hall Legislative Journal,** Vol. 2, No. 1, Fall 1976, pp.31-49.

GILROY, THOMAS P. **Dispute Settlement in the Public Sector: The State of the Art.** Washington, D.C.: Public Sector Labor Relations Information Exchange, United States Department of Labor, United States Government Printing Office, c1972, 141 pp.

GROSS, ERNEST. **Public School Law and Collective Negotiations: Problems in Interpretation.** New Brunswick, New Jersey: Institute of Management and Labor Relations, University Extension Division, Rutgers University, March 2, 1972, 14 pp.

METZLER ASSOCIATES. **Manual for Administrators, Wilmington, Delaware Board of Public Education.** Newark, New Jersey: Metzler Associates, 1970, 51 pp.

NEW JERSEY SCHOOL BOARDS ASSOCIATION. Preparing For Bargaining. Trenton, New Jersey, on videotape or 16 mm film with study guide, 25 minutes.

SPENLA, WILLIAM, GARRY WHALEN and CATHLEEN OTTO, "The Roles of Negotiations in the Equation 'Declining School Enrollments=Layoffs': A Management Perspective," Journal of Law and Education, Vol. 7, No. 2, April, 1978, pp. 243-263.

ZACK, ARNOLD. Understanding Grievance Arbitration in the Public Sector. Washington, D.C.: U.S. Department of Labor, c1974, 37 pp.

— Understanding Factfinding and Arbitration in the Public Sector. Washington, D.C.: U.S. Department of Labor, 1974, 38 pp.

REGULAR PUBLICATIONS DEALING WITH NEGOTIATIONS

(These may be ordered on a subscription basis from the respective publisher.)

American Arbitration Association. ARBITRATION IN THE SCHOOLS, 140 West 51 Street, New York, New York 10020, issued monthly.

Baywood Publishing Company, Inc. JOURNAL OF COLLECTIVE NEGOTIATIONS IN THE PUBLIC SECTOR. 43 Central Drive, Farmingdale, New York 11735, issued quarterly.

Bureau of National Affairs, Inc. GOVERNMENT EMPLOYEE RELATIONS REPORT. Washington, D.C. 20037, issued weekly.

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United States Department of Labor, Bureau of Labor Statistics. MONTHLY LABOR REVIEW. Documents, United States Government Printing Office, Washington, D.C. 20402, issued monthly.

Decisions Affecting Negotiations

Listed below are a number of court and PERC decisions which affect negotiations:[1]

1 PERC or the courts can alter case law at anytime. Before relying on these decisions, please check on whether they are currently good law. In addition, this is not an exhaustive list. For example, as of writing, there were at least 80 PERC scope of negotiations decisions. Only a few are listed here.

Authority of a Board's Negotiating Team

Bergenfield Board of Education and Bergenfield Education Association, PERC No. 90, 7/75.

East Brunswick Board of Education and East Brunswick Administrators' Association, PERC No. 77-6, decided 8/76.

Good Faith Negotiations

State v. N.J. Council of State College Locals, 141 N.J. Super 470 (App. Div. 1976). *The obligation to negotiate in good faith does not include an obligation to make a concession on any given issue or to agree to the proposal of the other party. Hard bargaining concept is accepted.*

Scope of Negotiations[2]

Ridgefield Park Education Association v. Ridgefield Park Board of Education, —N.J.—, Docket No. A-138, August 2, 1978. *C.123 did not create a permissive category. Transfers are non-negotiable.*

The Dunellen Triology

***Dunellen Board of Education v. Dunellen Education Association**, 64 N.J. 17 (1973). *Abolition of department chairmanship.*

***Burlington County College Faculty Association v. Board of Trustees**, 64 N.J. 10 (1973). *Negotiability of school calendar.*

***Board of Education of Englewood v. Englewood Teachers Association**, 64 N.J. 1 (1973). *Placement on salary guide.*

State of New Jersey v. State Supervisory Employees Association, State of New Jersey v. Local 195 IFPTE and Local 518 SEIU, —N.J.—, Docket No. A-162/176/190, August 2, 1978. *General statutes giving authority to employees do not render negotiations over terms and conditions illegal. Specific statutes and regulations which govern terms and conditions of employment cannot be abrogated by contract.*

Cinnaminson Township Board of Education and Cinnaminson Township Education Association, PERC No. 78-46, 1/78 and **Middlesex County College and Local 1940 (AFL-CIO)**, PERC No. 78-26, 11/77. *Decision to RIF is illegal subject of negotiations. Defines the parameters of what impacts of a RIF are negotiable.*

***Clifton Teachers Association, Inc. v. Board of Education of Clifton**, 186 N.J. Super 336 (App. Div. 1976). *Right to withhold salary increments cannot be negotiated.*

***Board of Education of the School District of the Township of Edison v. Edison Township Education Association**, App. Div., 1975, unreported. *Appointment of one person to coaching position rather than another is not mandatorily negotiable.*

Board of Education of the City of Englewood and Englewood Teachers' Association, PERC No. 76-23, 3/76. *Fair dismissal procedures and evaluation procedures are required subjects.*

The Board of Education of the City of Englewood and Englewood Teachers' Association, 150 N.J. Super 265, (App. Div., 1977). *The statutory power to reduce personnel cannot be the subject of negotiation or arbitration.*

Long Branch Education Association, Inc., v. Board of Education of the City of Long Branch, Monmouth County, 150 N.J. 262, Affirmed O.D. 73 N.J. 461. *Assignment of teachers to lunchroom supervision is educational policy decision.*

***Board of Education of the Township of North Bergen v. North Bergen Federation of Teachers**, 141 N.J. Super 97 (App. Div. 1976). *Criteria for promotions non-negotiable.*

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2 Some of these decisions occurred prior to the passage of Chapter 123 or were based on actions which arose prior to that date. They are marked with an asterisk.

Rockaway Township Education Association and The Board of Education of the Township of Rockaway, PERC No. 78-12, 9/77. *Contract clause on extended sick leave is illegal and unenforceable.*

Teaneck Board of Education and Teaneck Teachers Association, _N.J. Super_ (App. Div. 1978, unreported). *Criteria for evaluation cannot be negotiated as violative of public policy.*

Scope of the Grievance Procedure

Township of West Windsor v. Public Employment Relations Commission and P.B.A. Local 130, _N.J._, Docket No. A-179, August 3, 1978. *The terms of all negotiated grievance procedures must "cover" grievances concerning the interpretation, application or violation of policies, agreements and administrative decisions affecting the terms and conditions of employment.*

Employer Changes in Terms and Conditions

Warren Hills Regional Board of Education and Warren Hills Regional Education Association, PERC No. 78-69, decided 4/78. *Even though an educational policy decision to go to split sessions necessarily affects teachers' terms and conditions of employment, that fact does not change the right of the board to make that decision.*

Discrimination Due To Union Activity

Brookdale Community College and George S. Abel, PERC No. 78-80, 7/78. *College's denial of promotion was not justified by a substantial or legitimate business interest and was therefore due to union activity.*

Board of Education of the Borough of Haddonfield and Haddonfield Supportive Staff Association, PERC No. 77-36, 11/77. *Defines PERC's test for the finding of a N.J.S.A. 34:5.4(a)(3).*

Laurel Springs Board of Education and Mary Becker, PERC No. 78-4, 7/78. *Describes "totality of conduct" test for finding violations of 5.4(a)(3) and (a)(1).*

Manalapan-Englishtown Regional Board of Education and Edward A. Barrett, Superintendent, and Manalapan-Englishtown Educational Association, PERC No. 78-91, 7/78. *Board did not commit 5.4(a)(3) and (1) violation when it disciplined union president for disobeying order not to send union position statements to parents using students.*

State of New Jersey and Council of New Jersey State College Locals NJSFT-AFT/AFL-CIO, PERC No. 78-55, 3/78. *Commission finds that, while lower levels of the renewal/tenure process at Ramapo College may have been tainted with anti-union animus, the final decision not to renew and grant tenure was not.*

Department Chairmen as Supervisors

Freehold Regional High School Board of Education and Freehold Regional High School Education Association, D.R. No. 78-41, 5/78. *Department supervisors' and district supervisors' positions created through board reorganization are excluded from a bargaining unit with non-supervisors.*

River Dell Board of Education and River Dell Education Association, PERC No. 78-85, 7/78. *Department Chairmen are excluded from a bargaining unit with teachers due to "conflict of interest" occurring from teachers' strike.*

Maternity Leave, Childcare and Sick Leave Benefits

Board of Education of Cinnaminson v. Silver, 1976 S.L.D. (Aug. 16). *Temporary disability due to normal pregnancy and use of accumulated sick leave.*

Gilchrist v. Board of Education of Haddonfield, 155 N.J. Super 358 (App. Div. 1976). *Nonrenewal of nontenured pregnant teacher based on board policy minimizing classroom instruction interruptions not discriminatory.*

Castellano v. Linden Board of Education 158 N.J. Super 350 (App. Div. 1976). *Use of accumulated sick leave for pregnancy-related disability and mandatory leave policy for pregnant teachers.*

NJSBA ANALYSIS OF THE NJEA SAMPLE AGREEMENT FOR 1979-1980

The flurry of decisions from the State's Courts and administrative agencies have resulted in a substantial review of our commentary on the Sample Agreement.

As always, you should analyze contract demands in terms of their actual meaning and their effect in your own situation.

On the left of each page appears the actual text of the NJEA Sample Agreement. On the right of each page appears our commentary.

Negotiations, Consultation and Sound Personnel Relations

The **Ridgefield Park** decision deprives local school boards of the authority to negotiate over educational policy. For many boards, which have resisted the negotiation of those policies over the years, the case will have little impact. But for boards and administrations which see it as a signal to halt all exchange of viewpoints, the effects will be dramatic.

Nowhere in **Ridgefield Park** or in its predecessor, **Dunellen**, does the Court forbid broad professional consultation on matters of educational concern. In fact, in **Dunellen** the Court said:

> *Peaceful relations between the school administration and its teachers is an ever present goal and though the teachers may not be permitted to take over the educational policies entrusted by the statutes to the Board they, as trained professionals, may have much to contribute towards the Board's adoption of sound and suitable educational policies. . .*
>
> *It would seem evident that, when dealing in fields with which the teachers are significantly concerned though outside the fields of mandatory negotiation, the end of peaceful labor relations will generally be furthered by some measure of timely voluntary discussion between the school administration and the representatives of its teachers even though the ultimate decisions are to be made by the Board in the exercise of its exclusive educational prerogatives.*

The wisdom of consultation with individual teachers and with their unions is obvious when viewed from either an educational or labor relations perspective. Even where there has been little formal interchange between teachers and administrators, the opinions and conclusions of concerned classroom professionals has had a profound effect on the methodology of public education. The Legislature and the State Board of Education recognized the value of such input in the Thorough and Efficient Law and in supporting rules and regulations. The T & E Code (like the recently-adopted tenured teaching staff evaluation plan) directs that certain educational policies be set in consultation with teaching staff members. Therefore, if such consultation did not occur as a matter of course it is now a matter of law.

A secondary aspect of such consultation is that unmet frustrations in one area tend to surface someplace else. The whole environment of negotiations over terms and conditions of employment can be affected by the quality of your consultation process. If teachers, like other employees, feel that they are appreciated and that their advice, developed from years of experience, has been seriously considered, they will feel less of a need to achieve "equality" in other ways. In some districts, the strike or the public argument over negotiations is a substitute for such positive feelings.

Many employee concerns, while clearly prohibited from the negotiating table, can be pursued in other ways. Educational planning itself, based upon the T & E Code, invites teacher participation. Arbitrary or capricious board or administrator actions in policy areas are still reviewable by the Commissioner of Education and the State Board. And a board's policies must conform to State law and those laws can be enforced in the courts.

The far-sighted board and administration can live with the dictate of New Jersey's highest court that the peoples' rights cannot be bargained away and with the dictate of common sense that our professional employees have something valuable to offer us in educational planning. In that, **Ridgefield Park** should not be taken as a sign to abandon teacher involvement in policy formulation but to further encourage such participation in conformance with the laws which govern us.

PREAMBLE

This Agreement entered into this day of 19 , by and between the Board of Education of , the City of , New Jersey, hereinafter called the "Board," and Association, hereinafter called the "Association."

This section notes the date the contract was entered and is standard and acceptable.

WITNESSETH:

WHEREAS, the Board and the Association recognize and declare that providing a quality education for the students of the School District is their primary aim and that the character of such education depends predominately upon the quality of teaching, the availability of materials, the functional utility of facilities, the release of imagination in planning, the application of democratic processes in administration, and the maintenance of high morale among the teaching faculty, and

WHEREAS, the members of the teaching profession are particularly qualified to advise the formulation of policies and programs designed to improve educational standards, and

WHEREAS, the Board has an obligation, pursuant to Chapter 303, Public Laws 1968 to negotiate with the Association as the representative of employees hereinafter designated with respect to the terms and conditions of employment, and

The primary purposes of a labor agreement are: (1) to state the terms and conditions of employment of employees; (2) to place limitations on the ability of the employer to change those terms and conditions; and (3) to specify certain kinds of duties or requirements of employees. If a clause in the contract does not fulfill one or more of these purposes, it is extraneous.

The clauses in this section are extraneous. It is better deleted inasmuch as it may be used by an arbitrator or other third party to modify the meaning of the Agreement. The General Counsel of the NEA states: "*From a strict legal point of view they are not necessary. They may, however, be viewed by an arbitrator or a court as providing a clue to the intention of the parties in construing ambiguous provisions in the agreement. If such statements are to be included, therefore, the language should be carefully drafted.*" (See The Law and Practice of Teacher Negotiations, 3:16.)

WHEREAS, the parties have reached certain understandings which they desire to confirm in this Agreement, be it

RESOLVED, in consideration of the following mutual covenants, it is hereby agreed as follows:

This is standard language.

Article I, *Recognition*

A. **Unit**

The Board hereby recognizes the Association as the exclusive and sole representative for collective negotiation concerning grievances and terms and conditions of employment for all personnel whether under contract, on leave, on a per diem basis, employed or to be employed by the Board, but excluding:

(Insert positions excluded from the negotiating unit.)

The definition of the bargaining unit is very important. The board has the same right as the union to insist upon the proper negotiation unit. The unit should be limited to classifications of employees which have what is called a "community of interest." In a teachers' unit, this would include all certificated teaching personnel under contract. The unit may also include nurses, psychologists, social workers. The unit will differ from district to district.

Under Chapter 123, the superintendent and assistant superintendent must be excluded from all bargaining units. In addition, new supervisory bargaining units may not be represented by unions which admit non-supervisors to membership (such as the NJEA). Confidential employees also are excluded from bargaining units under Chapter 123. (See Confi-

dential Employees, earlier.) Should the board have any questions concerning the propriety or appropriateness of the bargaining unit as constituted, it may file with P.E.R.C. a petition for clarification of unit. (For a full discussion of bargaining units see PERC, pp. 30-43)

The inclusion of the phrase "on leave" has been used in some districts to argue that an employee on extended leave is entitled to all health care premiums paid by the board for other employees. This should be deleted or other sections of the contract should specifically exempt employees on extended leave from such benefits.

With the passage of time there might arise some difficulty when new titles are created in the district. There are several ways which can be used to resolve these unit problems. If you encounter difficulty, call your professional negotiator, board attorney or Field Service Representative for a full discussion of such matters as unit clarification, supervisory exclusion or unit consolidation.

B. Definition of Teacher
Unless otherwise indicated, the term "teachers," when used hereinafter in this Agreement, shall refer to all professional employees represented by the Association in the negotiating unit as above defined, and references to male teachers shall include female teachers.

Paragraph B means that every right granted a classroom teacher applies equally to all professionals who are not classroom teachers. Under special circumstances, the board may wish to reserve certain rights and privileges only to classroom teachers, such as preparation periods or tuition reimbursement. Whether or not you have such a definition, be careful to specify whether a contract clause applies to all employees.

Article II, *Negotiation of Successor Agreement*

A. Deadline Date
The parties agree to enter into collective negotiation over a successor Agreement in accordance with Chapter 123, Public Laws 1974 in a good-faith effort to reach agreement on all matters concerning the terms and conditions of teachers' employment. Such negotiations shall begin not later than August 1 of the calendar year preceding the calendar year in which this Agreement expires. Any agreement so negotiated shall apply to all teachers, be reduced to writing, be signed by the Board and the Association, and be adopted by the Board.

Under the Rules and Regulations of P.E.R.C., there is now a beginning date for negotiations on successor agreements. This is, as it has been for the past two years, about October 1st. If the parties agree to begin at a later date they may do so. The timetable established by P.E.R.C. for mediation and factfinding has been abandoned.

The sample agreement would begin bargaining on or before August 1st. In effect, boards would be bargaining over a successor to a contract which has not even taken effect. While timing of negotiations is within the power of the parties subject only to P.E.R.C.'s rules, this last point should be kept in mind. (With respect to the language in the last sentence, see Negotiating Committees and the

Board of Education, earlier.)

The phrase "on all matters concerning the terms and conditions of teachers' employment" arguably could mean negotiations on topics which have not been held to be required subjects. A preferable clause would delete "all matters concerning the".

B. Grants from Federal or State Agencies

The Board agrees that the procedure set forth in this ARTICLE shall be applicable to the determination and implementation of the grants to be requested by the Board pursuant to any federal and/or state laws, provided, however, that the relevant time-table shall be shortened if necessary to comply with time requirements in making or processing applications under the relevant federal or state laws.

C. Increase in State Aid

The Board agrees to reopen negotiations and permit amendments to any section of this Agreement whenever state and/or federal funds in addition to and/or in excess of those amounts previously anticipated for the fiscal year(s) covered by this Agreement have been appropriated. The Board shall so inform the Association within five (5) days of its notification of the amounts to be received in such subsequent state and/or federal appropriation.

Boards should reject B. and C. These call for automatic reopening of a contract in certain circumstances. When the contract is reached, it is preferable that it resolve all issues for its entire term. (See the "Fully-Bargained Clause" in the section of this analysis entitled **Board Proposals.**) No mention is made, it is noted, of reopening negotiations in the event of a decrease in State or Federal aid.

D. Modification

This Agreement shall not be modified in whole or in part by the parties except by an instrument in writing duly executed by both parties.

Section D. is a standard clause and should be retained in the agreement.

Article III, *Grievance Procedure*

The grievance procedure may be the most important section of any contract. Ideally, a grievance procedure will define a grievance, identify who may file a grievance, set a time limit on the filing of a grievance and detail individual steps through which a grievance must pass. Grievance procedures can provide a positive means for resolution of disputes.

A. Definitions

1. Grievance

A "grievance" is a claim by a teacher or the Association based upon the interpretation, application, or violation of this Agreement, policies or administrative decisions affecting a teacher or a group of teachers.

Definition: The Supreme Court's **West Windsor** case is discussed at length in an article earlier in this book, entitled, **Employee Grievances.** Please refer to it and direct inquiries to your board attorney, professional negotiator or to the Labor Relations Department of the NJSBA.

It is strongly recommended that the board seek two procedures in the agreement or carefully detail grievances that begin and end at different levels. This approach is consistent with the **West Windsor** decision.

Boards which have agreed to an arbitration clause should only agree to submit grievances to binding arbitration which arise under the express terms of the agreement. Grievances over "board policies and administrative decisions" should not fall under an arbitration clause.

Under the recommended grievance procedures, grievances can be defined as listed in this Sample Agreement paragraph. However, grievances over

alleged violation or misinterpretation of the contract would proceed through all grievance steps including binding arbitration. Grievances concerning "policies" would start and end with the board. Grievances concerning "administrative decisions" would start with the administrator responsible for the decision and end with the board.

These different initiation and terminal steps in this "multi-track" grievance procedure would meet your obligations under West Windsor and limit grievance review to the logical levels.

The Court strongly endorsed this multi-track approach in its decision.

2. Aggrieved person

An "aggrieved person" is the person or persons or the Association making the claim.

3. Party in interest

A "party in interest" is the person or persons making the claim and any person including the Association or the Board, who might be required to take action or against whom action might be taken in order to resolve the claim.

Who May File a Grievance: The Supreme Court decided on August 3, 1978, that the majority representative union has the constitutional and statutory right to present grievances on behalf of employees, and that this right cannot be waived through contrary contractual language. The case, involving the **Red Bank Regional Board of Education,** thus prohibits the negotiation of a clause to restrict the filing of grievances to individual employees. The Court decision assumed that individuals have a concurrent right to present grievances themselves; it did not address whether a union can file a grievance against the wishes of the affected employee.

B. Purpose

The purpose of this procedure is to secure, at the lowest possible level, equitable solutions to the problems which may from time to time arise affecting teachers. Both parties agree that these proceedings will be kept as informal and confidential as may be appropriate at any level of the procedure.

The purpose of the grievance procedure is not necessarily to achieve "equitable" solutions, but to resolve differences concerning the contract. The sample language grants unlimited discretion to an arbitrator to fashion an "equitable" solution according to his or her personal definition of justice.

C. Procedure

1. Time limits

The number of days indicated at each level should be considered as a maximum and every effort should be made to expedite the process. The time limits specified may, however, be extended by mutual agreement.

Time Limit: The sample agreement places rigid time limits on the board's administrative personnel but places no time limit on the grievant. It is in the interest of the parties that a time limitation be placed in the contract. If you find that you do not have enough time at any step to adequately consider a grievance, propose different time limitations. The contracts in the private sector often place a 3 day limit on the initial filing of grievances. While this may seem unduly restrictive, two to three weeks would not seem so.

Boards have had great success in

2. Year end grievances

In the event a grievance is filed at such time that it cannot be processed through all the steps in this grievance procedure by the end of the school year, and, if left unresolved until the beginning of the following school year, could result in irreparable harm to a party in interest the time limits set forth herein shall be reduced so that the grievance procedure may be exhausted prior to the end of the school year or as soon thereafter as is practicable.

adding realistic time limits on grievance initiation.

The phrase "should be considered" is unnecessary and should be replaced by the word "is".

3. Level one – principal or immediate superior

A teacher with a grievance shall first discuss it with his principal or immediate superior, either directly or through the Association's designated representative, with the objective of resolving the matter informally.

4. Level two – superintendent

If the aggrieved person is not satisfied with the disposition of his grievance at Level One, or if no decision has been rendered within five (5) school days after the presentation of the grievance, he may file the grievance in writing with the Association within five (5) school days after the decision at Level One or ten (10) school days after the grievance was presented, whichever is sooner. Within five (5) school days after receiving the written grievance, the Association shall refer it to the superintendent of schools.

In the sample agreement, there is no time limit on the filing of a grievance. That time limit should appear prior to or in the first step of the procedure.

The sample agreement's procedure begins with the principal or immediate superior and goes on to the superintendent. Those boards which have department chairmen who report to principals or unit leaders may desire to guarantee that both supervisory levels be part of the procedure.

School boards are, almost without exception in New Jersey, included as a step in the grievance procedure.

Boards should note with interest that there is no place in the NJEA sample agreement for the board of education. As the legally constituted body responsible for education, this omission is inexcusable. The grievance steps should reflect the actual chain of supervision in your school district. The board's role in the procedure would normally follow the chief school administrator's.

5. Level three – arbitration

(a) If the aggrieved person is not satisfied with the disposition of his grievance at Level Two, or if no decision has been rendered within ten (10) school days after the grievance was delivered to the superintendent, he may, within five (5) school days after a decision by the superintendent or fifteen (15) school days after the grievance was delivered to the superintendent, whichever is sooner, request in writing that the Association submit its grievance to arbitration. If the Association determines that the grievance is meritorious, it may submit the grievance to arbitration within fifteen (15) school days after receipt of a request by the aggrieved person.

(b) Within ten (10) school days after such written notice of submission to arbitration, the Board and the Association shall attempt to agree upon a mutually acceptable arbitrator and shall obtain a commitment from said arbitrator to serve. If the parties are unable to agree upon an arbitrator or to obtain such a commitment within the specified period, a request for a list of arbitrators may be made to the American Arbitration Association by either party. The parties shall then be bound by the rules and procedures of the American Arbitration Association in the selection of an arbitrator.

(c) The arbitrator's decision shall be in writing and shall be submitted to the Board and the Association and shall be final and binding on the parties.

Boards differ on whether they desire to have themselves, advisory or binding arbitration as the last step of the grievance procedure. No board is required to agree to binding arbitration. Prior to doing so you should be sure that you can operate the school system adequately with the definition of a grievance and the contract clauses to which you have agreed. Binding arbitration can prove harmful especially where you have agreed to a "savings clause," a "past practice clause," or general goal statements. Remember, no matter how responsible you believe the union to be, expect the organization to seek the most favorable (in their eyes) interpretation of a given clause. Can you now live with that interpretation? The amount of no or yes answers you give to this question may help you determine whether you desire to agree to binding arbitration.

If the union is intent on gaining binding grievance arbitration, they should be willing to remove any "past practice" clause. In addition, the

board should insist on a "no strike or work stoppage clause."

If you do agree to binding arbitration, it may be wise to consider a contract limitation on the issues that may be arbitrated. Matters which would traditionally be heard by the Commissioner of Education and the non-retention of a non-tenured teacher are two areas that might be excluded.

The following language might serve to limit the arbitrator to his or her proper role. *"The arbitrator shall be limited to the issues submitted and shall consider nothing else. The arbitrator can add nothing to nor subtract anything from, the Agreement between the parties."*

If you have agreed to binding arbitration, it is now critical because of the **West Windsor** decision to limit such arbitration to the "express terms of the written Agreement." Whether or not you have done that earlier in your procedure, you should do it here also. (Please refer to **The Meaning of Good Faith Negotiations**, earlier.) This is certainly one issue on which hard bargaining may be required to protect the very functions of public management of education.

If you are agreeing to a binding arbitration clause for the first time you should insist upon a no-strike pledge by the union. For sample language, see **Board Proposals**, earlier.

Although not needed in the contract, you should be aware of the "self-help" rule. This concept has been developed over a long period of time in the public and private sectors. Most arbitrators will hold that an employee must carry out any directive (unless it threatens his or her health or safety) and cannot refuse to do so on the grounds that the directive violated the contract. Employees who violate this procedure (also commonly referred to as the "work, then grieve" rule) can ultimately win on whether the directive was in violation of the contract but lose on the issue of the employer's discipline of the employee for insubordination.

(d) In the event that arbitrability of a grievance is at issue between the parties, jurisdiction to resolve the issue shall rest solely with the arbitrator selected in accordance with the provisions of Section C.5 (b) of this Article.

(e) The costs for the services of the arbitrator, including per diem expenses, if any, and actual and necessary travel, subsistence expenses and the cost of the hearing room shall be borne equally by the Board and the Association. Any other expenses incurred shall be paid by the party incurring same.

Boards should not agree to 5.d. This clause is designed to remove P.E.R.C. and the Courts from making decisions on what is negotiable and is not in the best interest of the board. 5.e. is standard.

In Ridgefield Park, the Court set forth a specific procedure for the review of arbitrability of a particular dispute. That procedure should be followed by boards.

D. Rights of Teachers to Representation

1. Teacher and association

Any aggrieved person may be represented at all stages of the grievance procedure by himself, or, at his option, representative(s) selected or approved by the Association. When a teacher is not represented by the Association, the Association shall have the right to be present and to state its views at all stages of the grievance procedure.

D.2. is a paraphrase of law. These protections are guaranteed by the law and need not be included in the contract.

2. Reprisals

No reprisals of any kind shall be taken by the Board or by any member of the administration against any party in interest, any representative, any member of the Association, or any other participant in the grievance procedure by reason of such participation.

E. Miscellaneous

1. Group grievance

If, in the judgment of the Association, a grievance affects a group or class of teachers, the Association may submit such grievance in writing to the superintendent directly and the processing of such grievance shall be commenced at Level Two. The Association may process such a grievance through all levels of the grievance procedure even though the aggrieved person does not wish to do so.

E.1. Note that the grievance would begin with the superintendent rather than the principal or immediate superior.

2. Written decisions

Decisions rendered at Level One which are unsatisfactory to the aggrieved person and all decisions rendered at Levels Two and Three of the grievance procedure shall be in writing setting forth the decision and the reasons therefore and shall be transmitted promptly to all parties in interest and to the Association. Decisions rendered at Level Three shall be in accordance with the procedures set forth in Section C, paragraph 5 (c) of this ARTICLE.

E.2. You retain the flexibility to agree on various approaches to your procedure. Some boards have highly formalized procedures, with written answers on prepared forms. Others find an informal approach more useful. Use what works for you.

3. Separate grievance file

All documents, communications and records dealing with the processing of a grievance shall be filed in a separate grievance file and shall not be kept in the personnel file of any of the participants.

4. Forms

Forms for filing grievances, serving notices, taking appeals, making reports and recommendations, and other necessary documents shall be prepared jointly by the superintendent and the Association and given appropriate distribution so as to facilitate operation of the grievance procedure.

The joint agreement on forms for filing grievances is a standard procedure. However, there need be no agreement to jointly construct forms for the balance of items listed in E.4. Of course, E.4.'s last few phrases might require a board to distribute grievance forms on a regular basis, a thoroughly ridiculous act.

Earlier in this book we printed a **Sample Grievance Form** which should streamline grievance record-keeping and clarify issues in dispute.

5. Meetings and hearings

All meetings and hearings under this procedure shall not be conducted in public and shall include only such parties in interest and their designated or selected representatives, heretofore referred to in this ARTICLE.

E.5 is a standard clause.

Article IV, *Teacher Rights*

A. Rights and Protection in Representation

Pursuant to Chapter 123, Public Laws 1974, the Board hereby agrees that every employee of the Board shall have the right freely to organize, join and support the Association and its affiliates for the purpose of engaging in collective negotiations and other concerted activities for mutual aid and protection. As a duly selected body exercising governmental power under the laws of the State of New Jersey, the Board undertakes and agrees that it shall not directly or indirectly discourage or deprive or coerce any teacher in the enjoyment of any rights conferred by Chapter 123, Public Laws 1974 or other laws of New Jersey or the Constitutions of New Jersey and the United States; that it shall not discriminate against any teacher with respect to hours, wages, or any terms or conditions of employment by reason of his membership in the Association and its affiliates, his participation in any activities of the Association and its affiliates, collective negotiations with the Board, or his institution of any grievance, complaint or pro-

This is an example of an unnecessary commitment to a paraphrase of the law. An interesting provision here is that only those teachers desiring to support or join the NJEA affiliate are protected. Those teachers who want to belong to another or no labor organization have no similar contract right. Another phrase that you should avoid begins on the fourth line: "*and other concerted activities for mutual aid and protection.*" This

ceeding under this Agreement or otherwise with respect to any terms or conditions of employment.

is not defined and may be used by the union to protect employees engaged in illegal work stoppages such as strikes.

Title 34:13A-5.3 states: "Except as hereinafter provided, public employees shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from such activity."

Despite the **Red Bank** decision discussed in the earlier article entitled, **Employee Grievances**, boards should refrain from placing statutory provisions in labor agreements. If, for some reason, references are made to existing statutes, they should be specific references, not paraphrases of law such as contained in A. Furthermore, boards should think seriously before agreeing to allow arbitrators to make determinations of the meaning of statutes. **The arbitration clause can be as narrow as the parties make it.** You can exclude disputes over statutory terms and conditions of employment from arbitration.

B. Statutory Savings Clause

Nothing contained herein shall be construed to deny or restrict to any teacher such rights as he may have under New Jersey School Laws or other applicable laws and regulations. The rights granted to teachers hereunder shall be deemed to be in addition to those provided elsewhere.

The second sentence is a "past practice" clause. The goal of this sentence is to freeze all existing "benefits." If this sentence is present anywhere in your contract your administrative personnel may never be sure of whether a certain practice is a teacher "benefit." Boards should never agree to a contract clause the meaning of which is unclear. The union should be asked which "benefits" it seeks to guarantee by this sentence. That question may result in a withdrawal of the demand. On the other hand, their answer may make you think twice about agreeing to this sentence.

C. Just Cause Provision

No teacher shall be discharged, disciplined, reprimanded, reduced in rank or compensation, or deprived of any professional advantage, or given an adverse evaluation of his professional services without just cause. Any such action asserted by the Board, or any agent or representative thereof, shall be subject to the grievance procedure herein set forth.

In section C, the entire paragraph is an enlargement on the basic grievance procedure. Consenting to this paragraph in effect gives a discharged teacher "two bites of the apple". A controversy involving discharge that is grieved under this article and determined against the teacher's interest perhaps could be argued again at a formal hearing before the Commissioner. Accordingly, the paragraph as proposed subjects the board to double litigation. This clause is in addition to the rights granted to non-tenured teachers under Chapter 132, P.L. 1975 and rights

granted to tenured teachers under the tenure law and recently-adopted evaluation rules of the State Board of Education.

In addition, it is the Commissioner of Education who is the professional in educational matters, not arbitrators who are essentially experts in contract interpretation. Teachers' unions, which claim a special position on policy-input because of the professionalism of the teaching staff, should readily recognize this.

The recent **West Windsor** case raises serious implications concerning the nature of the Commissioner of Education's review powers compared to the authority granted to an arbitrator under the terms of a labor contract. Because of the complexity of the "Just Cause" topic and of its great impact on school management, please seek guidance prior to even discussing this issue in negotiations.

And, on line two, what is meant by "professional advantage?"

In a recent opinion, an arbitrator ruled that a certain number of aides were a "professional advantage" to teachers and must be employed despite the board's economic difficulties. Other potential "professional advantages" could number in the hundreds in a school district.

D. Required Meetings or Hearings

Whenever any teacher is required to appear before the superintendent or his designee, Board or any committee, member, representative or agent thereof concerning any matter which could adversely affect the continuation of that teacher in his office, position or employment or the salary or any increments pertaining thereto, then he shall be given prior written notice of the reasons for such meeting or interview and shall be entitled to have representative(s) of the Association present to advise him and represent him during such meeting or interview. Any suspension of a teacher pending charges shall be with pay.

The last sentence requires that suspensions be with pay. Suspension of teaching personnel should be without pay because of the difficulty in obtaining reimbursement of monies paid to employees who subsequently lose appeals before the Commissioner.

E. Evaluation of Students

The teacher shall maintain the exclusive right and responsibility to determine grades and other evaluations of students within the grading policies of the
School District based upon his professional judgment of available criteria pertinent to any given subject area or activity to which he is responsible. No grade or evaluation shall be changed without approval of the teacher.

The **Ridgefield Park** decision probably renders this an illegal subject. But even prior to that decision, it seemed clear that the clause was a violation of law.

This clause may very well be a violation of law. In a decision by the Acting Commissioner of Education in July, 1977, the following appeared:

It is essential that local boards must retain such authority of review to prevent assignment of unreasonable or arbitrary grades. The acts of teachers may neither be insulated from administrative review of their supervisors and administrators nor from quasi-judicial review by the

Commissioner or judicial review by the courts.

F. Criticism of Teachers
Any question or criticism by a supervisor, administrator, or board member of a teacher and his instructional methodology shall be made in confidence and not in the presence of students, parents, or other public gatherings.

This section, if enforced in every case probably would run counter to the Sunshine Law. Court decisions have determined that it is the individual employee who can select or reject public discussion of a personnel matter. The union cannot waive individual rights. If a non-tenured teacher, for example, desires an informal conference on his or her non-renewal to be held in public, the intent of this clause would have to be violated by the board as it complies with the Open Meetings Act.

G. Association Identification
No teacher shall be prevented from wearing pins or other identification of membership in the Association or its affiliates.

Article V, *Association Rights and Privileges*

A. Information
The Board agrees to furnish to the Association in response to reasonable requests from time to time all available information concerning the educational program and the financial resources of the district, including but not limited to: class size, number of specialists, annual financial reports and audits, register of certificated personnel, tentative budgetary requirements and allocations, agendas and minutes of all Board meetings, census data, individual and group teacher health insurance premiums and experience figures, names and addresses of all teachers, and such other information that shall assist the Association in developing intelligent, accurate, informed and constructive programs on behalf of the teachers and their students, together with information which may be necessary for the Association to process any grievance or complaint.

A. goes well beyond the legal requirements to provide information. First, the union's right to certain information will rest on an interpretation of Chapter 123. Therefore, there is no need for this clause in the contract. Second, the sample language guarantees that the board will supply data that has little or no relevance to collective negotiations. Particularly disturbing is the reference to "tentative budgetary requirements and allocations," whatever that means.

Unions generally have a right to information possessed by the employer which is reasonably needed to carry out the union's duty to negotiate on behalf of its members or to fairly process grievances. If you are presented with a demand which you believe goes beyond these standards, consult your board attorney or professional negotiator.

The reference in the latter part of this clause to "developing intelligent, accurate, informed and constructive programs on behalf of the teachers and their students" is inappropriate in a labor contract. The right to have access to reasonable amounts of information is related to the union's bargaining obligations, not the attempt by a labor organization to review educational plans for non-bargaining purposes.

B. Released Time for Meetings
Whenever any representative of the Association or any teacher participates during working hours in negotiations, grievance proceedings, conferences, or meetings, he shall suffer no loss in pay.

The balance of Article V grants certain rights to the union. You are under no legal obligation to grant any of these rights.

B. could be agreed to if the "no loss of pay" provision covered employees mutually scheduled to participate in union activities.

C. Use of School Buildings
The Association and its representatives shall have the right to use school buildings at all reasonable hours for meetings. The principal of the building in question shall be notified in advance of the time and place of all such meetings. No approval shall be required.

C. in its "no approval" section could substantially interfere with the educational and/or extracurricular program in the district. It would be wiser to retain prior approval.

D. Use of School Equipment
The Association shall have the right to use school facilities and equipment, including typewriters, mimeographing machines, other duplicating equipment, calculating machines, and all types of audio-visual equipment at reasonable times, when such equipment is not otherwise in use. The Association shall pay for the reasonable cost of all materials and supplies incident to such use, and for any repairs necessitated as a result thereof.

D. requires no advanced approval. Is this wise? Is there a difference between the word "reasonable" and the actual cost?

E. Bulletin Boards
The Association shall have, in each school building, the exclusive use of a bulletin board in each faculty lounge and teachers' dining room. The Association shall also be assigned adequate space on the bulletin board in the central office for Association notices. The location of the Association bulletin boards in each room shall be designated by the Association. Copies of all materials to be posted on such bulletin boards shall be given to the building principal, but no approval shall be required.

F. Mail Facilities and Mail Boxes
The Association shall have the right to use the inter-school mail facilities and school mail boxes as it deems necessary and without the approval of building principals or other members of the administration.

F. A recent United States Postal Service decision involving the Detroit School System indicates that transmission of union materials through interschool mail channels may be a violation of Federal postal regulations.

G. Office Space
The Association shall be provided without cost to it, with adequate office space in a building at a location and of a description to be mutually agreed upon. The Association shall be allowed to install a telephone in such office at its own expense.

H. Leave for Association President
The Board shall grant up to full leave with pay to the president of the Association during his term in office according to a schedule submitted by the president prior to the beginning of each school year.

G., H. Most districts will find it impossible to comply with these demands.

I. Released Time for Faculty Representative
The Board shall provide up to ( ) hours per week of released time to a faculty representative designated by the Association in each building to perform his functions as Association representative in the enforcement of this Agreement. Said time shall be in addition to regularly scheduled preparation time and lunch period as provided in this Agreement.

I. In larger districts, leave is granted in limited amounts. Your circumstance should dictate whether a similar clause is acceptable.

J. Orientation Programs
All orientation programs for new teachers shall be co-sponsored by the Board and the Association with the Association obligated to assume only such costs as may be mutually agreed upon during the planning of such programs. To the extent prohibited by law, the Board shall not be expected to assume the cost of purely social events conducted as part of such orientation programs, nor shall the Association be expected to assume the cost of speakers, consultants, and services normally considered an appropriate professional in-service training activity of a board of education. Duties and responsibilities of teachers involving student supervision outside of regular class work shall be clearly explained as part of the regular orientation program.

J. makes the union an equal partner with the board and its administration in orientation programs. This clause may violate that provision of Chapter 123 which prohibits an employer from "assisting" a labor organization.

K. Sub Contracting
The Board shall enter into no contract which will result in instruction being provided, supervised, or otherwise influenced by any person or persons, organization, group or company other than properly certificated persons directly employed by the Board or by the Association without the express written approval of the Association.

The agreement to Paragraph K. might seriously jeopardize the educational program of districts that might have to rely upon sub-contracting. This might especially be true if boards sub-contract in order to meet T & E mandates.

An agreement forbidding subcontracting of some professional services may obstruct those T & E obligations and be illegal under Ridgefield Park.

L. Exclusive Rights
The rights and privileges of the Association and its representatives as set forth in this Agreement shall be granted only to the Association as the exclusive representative of the teachers, and to no other organizations.

Article VI, *Teacher Work Year*

A. In-School Work Year

1. Ten (10) month personnel
The in-school work year for teachers employed on a ten month basis (other than new personnel who may be required to attend an additional ( ) days of orientation) shall not exceed ( ) days.

2. Twelve (12) month personnel
The in-school work year for teachers employed on a twelve (12) month basis shall not exceed ( ) days.

3. Definition of in-school work year
The in-school work year shall include days when pupils are in attendance, orientation days, and any other days on which teacher attendance is required.

A.3. could pose problems to the board. Any agreement concerning the number of work days must be carefully thought out. For example, agreement to a 180 day work year would, under A.3., preclude any required teacher attendance on orientation and planning days.

4. Inclement weather
Teacher attendance shall not be required whenever student attendance is not required due to inclement weather.

B. School Calendar
The school calendar for 19 - shall be as set forth in Schedule B. Changes in the school calendar shall be made only after agreement between the Association and the Board.

B. requires the board to negotiate the school calendar. The **Burlington County College** Supreme Court decision and more recent decisions indicate that, while the actual number of days in the work year is a required subject, the placement of those days is not. Because PERC had viewed negotiations over the calendar itself to be a "permissive" topic, this subject is probably in the illegal category. However, in a March, 1978 decision (**Edison**), PERC stated that the board is obligated to negotiate the impact of changes in the work calendar upon terms and conditions of employment (see **Balancing Management Rights and the Duty to Bargain**, earlier).

Most boards have found that local unions have little desire to negotiate the calendar itself. Consultation with teachers, with or without a contract clause, may be all that is needed.

C. Negotiating Calendar in Multi-year Agreements
The school calendar shall be negotiated each year for the term of this Agreement and such negotiations for any particular school year shall begin no later than October 1 of the previous year.

Article VII, *Teaching Hours and Teaching Load*

A. Teacher Day

1. Check-in procedure
As professionals, teachers are expected to devote to their assignments the time necessary to meet their responsibilities, but they shall not be required to "clock in or clock out" by hours and minutes. Teachers shall indicate their presence for duty by placing a check mark in the appropriate column of the faculty "sign-in" roster.

A.1. Boards may desire more proof of presence than a check mark on a roster.

2. Length of the day

The arrival and departure times for all teachers shall be designated in Schedule C; however, their total in-school workday shall consist of not more than ( ) hours and ( ) minutes which shall include a duty-free lunch period as guaranteed to teachers under Section C of this ARTICLE.

A.2. While the length of the school day is a required subject of negotiations, you must be very careful to avoid limiting district operation. Districts which negotiate total hours of the work day and not the actual times employee attendance is required have substantially more flexibility to meet changing conditions.

3. Arrival and dismissal time

Except as clarified in paragraph 4 below, no teacher shall be required to report for duty earlier than ( ) minutes before the opening of the pupil's school day, and shall be permitted to leave ( ) minutes after the close of the pupil's school day, except as otherwise designated in Schedule C. On Fridays or on days preceding holidays or vacations, the teachers' day shall end at the close of the pupils' day.

A.3. In order to protect flexibility in assignment, it would be wise for a board to avoid specifying the actual arrival and dismissal time for teaching personnel.

4. Extra pay for extra service

Any teacher who is required to work beyond the regular teacher in-school work year as defined in ARTICLE IV, or beyond his total in-school workday as defined in paragraphs 2 and 3 above, shall be compensated at ($) dollars.

A.4. Should be refused on the grounds that, as professionals, teachers should perform reasonable amounts of work beyond the normal work day. Under the clause, an argument can be made that grading and preparation must be additionally compensated for.

Few boards have agreed to this clause. Most provide some additional compensation for specific duties.

A Commissioner's Decision on non-teaching assignments was recently upheld by the New Jersey Supreme Court. In that decision which supported the right of boards to make assignment of non-teaching duties to teachers, the Commissioner stated:

A long history of the teaching and supervising of children in public schools has proven that the teacher, with his/her training, experience and knowledge of children, is the best and most effective person to control such situations. This is the reason why teachers have been relied upon, since the virtual inception of the common school as it was originally known, as the persons best able and most suitable to protect the health, safety and welfare of the tens of thousands of school age children whom parents have entrusted to the care of the public schools.

(Long Branch).

B. Teaching Load

1. Junior and senior high schools

The daily teaching load in the junior and senior high school shall be ( ) teaching periods and shall not exceed ( ) hours of pupil contact per day. Assignment to a supervised study period or non-compensated extra-curricular activity during school hours shall be considered a teaching period for the purpose of this ARTICLE.

The determination of whether "teaching load" is a term and condition may rest on a "balancing" of the teachers' interests as employees and the students' interests. It is impossible to categorize this topic prior to further PERC and court decisions.

2. Elementary schools

The daily teaching load in the elementary schools shall not exceed ( ) hours of pupil contact.

Each of the paragraphs in B. - 'Teaching Load - are designed to limit by contract the amount of teaching or preparation performed by teachers. Obviously, the ability of the district to agree on any of these clauses will rest on its financial ability to pay additional personnel both now and in the future (a clause that gets into a contract is difficult to delete).

3. Department heads

Department heads shall not be assigned more than ( ) student instruction-supervision periods each day, and shall be excused from regular study hall duties and homeroom assignments. A student instruction-supervision period means any period during which a teacher is responsible for directing the learning or supervising the behavior of students.

B.3. Department heads who are truly supervisors within the meaning of the PERC law should not be included in the teachers' agreement.

4. Instructional planning

Every teacher shall plan and teach course content in the manner he considers most practical and useful. Teachers who have received satisfactory evaluation shall not be required to submit standardized daily or weekly lesson plans which involve a mandated procedure or form. Teachers shall provide substitutes with daily, weekly, and/or alternate plans as needed, according to procedures developed by the principal and the Liaison Committee in each building as hereafter established under ARTICLE XXII of this Agreement.

B.4. This is clearly an illegal subject under Ridgefield Park.

5. Number of preparations

Junior and senior high school teachers shall not be required to teach more than ( ) subject area(s), nor more than a total of ( ) teaching preparations.

6. Changing teaching stations

Regular classroom teachers in the junior and senior high schools shall not be required to change subject area teaching stations more than ( ) time(s) during the school day.

7. Continuous teaching in secondary schools

Secondary teachers shall not be required to teach continuously for more than ( ) periods, nor ( ) where double periods are used.

8. Continuous teaching in elementary schools

Elementary teachers shall not be required to teach continuously for more than ( ) hours.

B.5., 6., 7. and 8. Scheduling and financial considerations will gauge the acceptability of these clauses.

A clause on these topics which precluded a board's ability to provide a T & E education would likely be ruled an illegal subject under Ridgefield Park. Such clauses, in any event, are rare in teachers' agreements.

C. Lunch Periods

1. Grade level and other

Teachers shall have a dail duty-free lunch period of at least the following lengths:

a. Elementary School _____
b. Junior High School _____
c. Senior High School _____
d. Other _____

2. Leaving the building

Teachers may leave the building without requesting permission during their scheduled duty-free lunch periods.

C.2. Some boards may desire to require notice of a teacher leaving.

D. Meetings

1. Faculty and other

Teachers may be required to remain after the end of the regular workday, without additional compensation, for the purpose of attending faculty or other professional meetings ( ) day(s) each month. Such meetings shall begin no later than ( ) minutes after the student dismissal time and shall run for no more than ( ) minutes. Except in cases of an emergency involving the health and safety of students and teachers, if additional time is needed, students shall be dismissed early.

2. Prior to holidays and weekends

Meetings which take place after the regular in-school workday and which require attendance shall not be called on Fridays or on any day immediately preceding any holiday, or other day upon which teacher attendance is not required at school.

3. Association right to speak

An Association representative may speak to the teachers during any meeting referred to

Paragraph D. would restrict the number of meetings that the administration could require teachers to attend after regular school hours without paying additional compensation for such attendance. The board must consider the desirability that a teacher attend such other functions as PTA meetings and special assignments and programs presented by the students. It is legally questionable whether the union should have a

in paragraph 1 above for at least ( ) minutes on the request of the representative.

4. Notice and agenda

The notice of and agenda for any meeting shall be given to the teachers involved at least ( ) days prior to the meetings, except in an emergency. Teachers shall have the opportunity to suggest items for the agenda.

5. Evening meetings

Teachers may be required to attend no more than ( ) evening assignments or meetings each school year without additional compensation.

right to speak at meetings which teachers are required to attend.

E. Preparation Time

1. Grade level

Classroom teachers shall, in addition to their lunch period, have daily preparation time during which they shall not be assigned to any other duties as follows:

a. Elementary School _____
b. Junior High School _____
c. Senior High School _____
d. Other members of the negotiating unit who are not regular classroom teachers shall be provided with preparation time to the same extent as other teachers.

Paragraph E. must be considered in light of the specific requirements and duties of each classification in the unit. It must be also observed that this provision would result in allowing "preparation time" to all administrators, guidance counselors, nurses, etc. It does not appear reasonable to provide this group of individuals with "preparation time" in light of their duties.

2. Additional time for exceptions

Any teacher may, subject to Association approval, voluntarily accept a teaching preparation in excess of the maximums stated in Section B, paragraphs 1, 2, and 3 of this ARTICLE and shall be granted another period of preparation each day for each additional preparation assignment.

3. Extra pay and/or released time

a. It is desirable for each teacher to have an uninterrupted preparation period each day. The practice of using a regular teacher as a substitute, thereby depriving him of his preparation period, is undesirable and shall be discouraged. In those cases where regular substitutes are not available, regular teachers who volunteer may be used as substitutes during their non-teaching time. In the absence of volunteers, a teacher may be assigned to serve as substitute. Volunteers and assigned teachers shall be paid at the rate of 1/1000 of their annual contract salary per class covered or the teacher may choose to credit these periods up to a total of ( ) periods which shall entitle him to ( ) additional personal business day(s) to be taken before the end of the current school year. Such coverage shall be arranged by the principal of the school in question and shall be distributed as equitably as possible among the teachers in said school.

b. In those cases where regular substitutes are not available and two classes are to be combined for the day or a major part thereof, the teacher in charge shall be paid 1/200 of his annual contract salary in addition to his regular salary; if the class is divided between two or more other teachers, each teacher teaching any part of the split class shall receive 1/400 of his annual salary in addition to his regular salary.

F. Exceptions

Exceptions to the provisions of Sections A, B, C, D and E above, may be made only in cases of extreme emergency. The Association shall be notified in each such instance, in advance if possible. A disagreement over whether an exception is justified shall be subject to the grievance procedure and shall be initiated at Level Two thereof.

Paragraph F. attempts to establish the procedure and criteria for variation for the agreements concerning the previously discussed sections. The administration should not be prevented from making the necessary decisions in this area.

It is possible that any arbitration award which precludes an employer from acting in an emergency according to the employer's definition of "emergency" might be illegal.

G. Extra-curricular Activities

1. Approved activities

The Board and the Association agree that the extra-curricular activities listed in Schedule E are educationally worthwhile.

G.1. should be rejected. An arbitrator could read this clause as forbidding a board from terminating an activity because of the change in educational philosophy or lack of funds.

2. Salary

Teacher participation in extra-curricular activities which extend beyond the regularly scheduled in-school day shall be voluntary, and shall be compensated according to the rate of pay and/or released time in Schedule E.

The board should not agree to paragraph G.2.which states that teacher participation in extra-curricular activities is voluntary. (See also comments concerning Article VII, A.4.above).

3. Staggered schedule
In cases where released time is stipulated for extra-curricular assignments, such time shall be scheduled as a block at the beginning or end of the in-school day and attendance of the teacher at school shall not be required during said time.

H. Field Trips
Field trips shall be scheduled and implemented in a manner which shall be mutually agreed upon by the teachers participating in them. Written permission for field trips shall be obtained from the superintendent to guarantee insurance coverage as a school sponsored activity. For participation in field trips which extend beyond the teacher's in-school workday, and overnight or weekend trips, teachers shall be compensated at the rate set forth in Section A, paragraph 4 of this ARTICLE.

Article VIII, *Teacher Student Ratio*
A. Maximums
The maximum number of pupils per teacher shall be as stated below.

(Illustrative categories)

	19_____	19_____
1. Elementary Levels		
Kindergarten		
First Grade		
Second Grade		
Third Grade		
Fourth Grade		
Fifth Grade		
Sixth Grade		
Seventh Grade		
Eighth Grade		
Other (Pre-kindergarten, pre-first, non-graded primary, non-graded elementary)		
2. Secondary Levels (Per period)		
Regular academic classes		
Typing		
Drafting		
Shops		
Music		
Art		
Physical Education		
Other		
3. Special Education		
Multiple Handicapped		
General Orthopedic		
Visually Handicapped		
Auditory Handicapped		
Chronically Ill		
Educable		
Trainable		
Emotionally Disturbed		
Neurologically Impaired		
Perceptually Impaired		
Socially Maladjusted		
Communication Handicapped		
Other		

4. Reduction for exceptions
Any class based on the maximum per teacher limits stated in paragraphs 1, 2 and 3 above shall be reduced when the number of pupils assigned to any room is larger than:

a. The capacity of teaching facilities, number of adequate teaching stations and number of adequate pupil stations available in the room,
b. The appropriateness of the room to content of the course, the methods of instruction to be employed, and the prior preparation of teachers therefore,
c. The availability of equipment for adequate teacher demonstration and student use,

While it is obviously preferable to have voluntary guidance of these activities, circumstances may not allow it for all activities.

H. The first sentence is an illegal subject.

This is probably an illegal subject under **Ridgefield Park.** Although PERC had earlier held it to be a "permissive" subject, it had also ruled that the impact of changes in class size upon terms and conditions of employment was a required subject.

d. Any other conditions which affect the health, safety and supervision of the pupils.

B. Exceptions
Exceptions to the provisions of Section A above may be made only if it is necessary to do so in the best interests of the educational process. The Association shall be notified in each such instance. A disagreement over whether an exception is justified shall be subject to the grievance procedure and shall be initiated at Level Two thereof.

Article IX, *Specialists*

This is probably an illegal subject in light of **Ridgefield Park.**

A. Minimums
The Board and the Association recognize the fact that an adequate number of competent specialists is essential to the operation of an effective educational program. Accordingly, by the beginning of the 19 - school year, there shall be no less than the following number of qualified specialists in each of the listed categories:

(Illustrative Categories)

1. Elementary Level	
Art teachers	Not less than 1 for every students
Instrumental music teachers	Not less than 1 for every students
Vocal music teachers	Not less than 1 for every students
Foreign language teachers	Not less than 1 for every students
Physical education teachers	Not less than 1 for every students
Guidance counselors	Not less than 1 for every students
Reading specialist	Not less than 1 for every students
Nurses	Not less than 1 for every students
Instructional media specialists (librarians)	Not less than 1 for every students
2. Secondary Level	
Guidance counselors	Not less than 1 for every students
Reading specialist	Not less than 1 for every students
Instructional media specialists (librarians)	Not less than 1 for every students
Distributive education	Not less than 1 for every students
Nurses	Not less than 1 for every students
3. Special Services	
Remedial reading	Not less than 1 for every students
Speech therapist	Not less than 1 for every students
Learning disability specialist	Not less than 1 for every students
Psychologist	Not less than 1 for every students
Psychiatrist	Not less than 1 for every students
Social worker	Not less than 1 for every students

B. No Reduction
The number of specialists presently employed in categories not listed above shall not be reduced during the term of this Agreement.

B. This is an illegal subject of negotiations.

C. Substitutes

1. Certification
Positions which are vacant because teachers are temporarily absent shall be filled by teachers who hold a standard certificate issued by the New Jersey State Board of Examiners.

C.1. is probably an illegal subject under **Ridgefield Park.**

2. List
The Board agrees at all times to maintain an adequate list of substitute teachers who shall be provided with appropriate orientation and training by the administration to help them instruct the classes they cover.

C.2. Negotiation to "maintain an adequate" list of substitutes may be an illegal subject as well as agreement over the phrase "appropriate orientation and training".

3. Coverage
The Board shall provide substitutes for all personnel in all departments, including special teachers, nurses, clerks and secretaries.

C.3. In most school districts, this requirement is totally unrealistic.

4. Pool
Beginning with the 19 - school year, the Board agrees to employ
( ) unassigned teachers, or ( ) unassigned teachers,
( ) for the elementary schools, ( ) for the middle school and
( ) for the high school who shall be employed full-time to serve in positions to which they may be assigned from day to day. Such teachers shall be required to work each school day in the particular position and school to which they are assigned for that day, and may be assigned to fill positions of teachers who are temporarily absent. Such teachers shall not replace a teacher who is on extended absence or who has left the school district. Such unassigned teachers shall be considered full-time regular staff members for all purposes and shall be entitled to all of the benefits and privileges of assigned teachers as provided by this Agreement or otherwise.

C.4. Is an illegal subject. In any event, few, if any, boards have found this clause acceptable.

Article X, *Nonteaching Duties*

A. Intent
The Board and Association acknowledge that a teacher's primary responsibility is to teach and that his energies should, to the extent possible, be utilized to this end. Therefore, they agree as follows:

Paragraph A. of Article X is a goal statement and should not be agreed to.

B. Application

1. List of nonteaching duties

Option (a)
Personnel other than teachers shall perform nonteaching duties and teachers shall not be required to perform the following duties:

1. Nonprofessional assignments, including but not limited to milk distribution and supervision of cafeterias, sidewalks, bus loading or unloading or playgrounds.
2. Collecting money from students.
3. Inventorying and storing books, delivering books to classrooms, duplicating instructional and other materials, keeping registers and cumulative record cards, and other clerical and/or custodial functions.
4. Correcting standardized tests used at the direction of the Board or the Administration.

Option (b)

1. Teachers may volunteer to perform the following nonteaching duties at the rate of $ per period.
   a. Cafeteria duty
   b. Supervision of playgrounds
   c. Supervision of bus loading
   d. Supervision of bus unloading
   e. Milk distribution

Nonteaching Duties

2. Personnel other than teachers shall perform nonteaching duties and teachers shall not be required to perform the following duties.
   a. Collecting money from students.
   b. Inventorying and storing books, delivering books to classrooms, duplicating instructional and other materials, keeping registers and cumulative record cards, and other clerical and/or custodial functions.
   c. Correcting standardized tests used at the direction of the Board or the Administration.

The sample agreement allows the local union to seek a clause requiring the board to pay teachers for these "non-professional" duties. If the district can afford aides to perform any or all of these duties, the board could consider agreeing to various parts of B.1., 2. and 3. This could be used as a concession in return for equivalent bargaining concessions by the union. In tight economic times, these clauses can present difficulty.

Teacher organizations had historically opposed assignment of non-teaching duties to teachers on the grounds that such duties were non-professional. B.1. option (a) is consistent with that position. B.1. option (b) makes such assignments purely voluntary. You should refer to the Commissioner's decision cited in Article VII, A.4 above.

It is possible given the Commissioner's decision in **Long Branch** (upheld by the Supreme Court earlier) that

certain aspects of this clause are illegal. For example, B.1. Option (a) 1. clearly negotiates away the district's right to assign cafeteria, corridor, playground or bus duties, responsibilities which PERC had held to be "permissive" subjects but which now appear to be illegally negotiable.

2. Secretarial assistance
By the beginning of the 19 - school year, the Board shall hire one (1) secretary for every ( ) teachers to assist teachers in the preparation of materials, correspondence, ordering supplies and other duties related exclusively to teachers.

3. Noneducational activities
Activities which have no educational objective shall be barred from the classroom. There shall be no collection of funds from students for:

a. Activities in which all pupils are expected to participate which should be legitimately financed by the Board.
b. Other activities of such a desirable educational nature that they should be legitimately financed by the Board.
c. Activities and charitable purposes not appropriate or directly related to the age and interests of the pupils.
d. Activities and charitable purposes beyond the ability to pay of the least able pupil in the class.

B.3. This clause is illegal because an arbitrator's opinion can supplement a board's with respect to the meaning of "educational objective".

4. Transporting students
a. Teachers shall not be required to drive students. A teacher may do so voluntarily, however, with the advance approval of his principal or immediate supervisor. He shall be compensated at the rate of (¢) cents per mile for the use of his own automobile.
b. By the beginning of the 19 - school year, the Board shall cover all damages, losses, and expenses incurred by a teacher arising out of the authorized use of his automobile in the performance of school duties.

Article XI, *Teacher Employment*

Article XI brings the union into the hiring process. This area is considered, for good reason, a basic management prerogative.

A. Certification

1. Standard certificates
The Board agrees to hire only fully certificated teachers holding standard certificates issued by the New Jersey State Board of Examiners for every teaching assignment.

In **Ridgefield Park**, the Court relied heavily on C.212, the T & E law, which very specifically lists hiring as a policy-making function to be carried out with a "maximum of citizen participation". As such, agreements which limit boards in setting criteria for hiring (within the framework of existing law) are illegal.

2. Notification
Upon employment the superintendent shall report to the Association in writing the certificates and degrees held, major and minor fields of study, and prior experience of each new teacher.

There is no valid reason why the superintendent should be required to "report" to the association the information demanded in paragraph A., clause 2 or other similar items frequently demanded.

B. No Reduction
The Board agrees there shall be no reduction in the number of teachers from the previous year in positions defined in the unit represented by the Association as heretofore specified in ARTICLE I, Section A, of this Agreement for the duration of the Agreement.

B. This is an illegal subject of negotiations.

C. Non-Certificated Personnel
The duties of non-certificated personnel shall be confined solely and exclusively to such duties as would assist certificated professional personnel in the performance of their respective duties. In no case shall any non-certificated employee be requested or required to perform any duty previously performed by a duly certificated professional employee.

C. The assignment of personnel, as long as it is carried out consistent with existing law, is a major educational policy and, therefore, an illegal subject.

D. Placement on Salary Schedule

1. Adjustment to salary schedule

Each teacher shall be placed on his proper step of the salary schedule as of the beginning of the 19 - school year in accordance with paragraph 2 below. Any teacher employed prior to February 1 of any school year shall be given full credit for one (1) year of service toward the next increment step for the following year.

2. Credit for experience

Credit up to the ( ) step of any salary level on the Teacher Salary Schedule shall be given for previous outside teaching experience in a duly accredited school upon initial employment in accordance with the provisions of Schedule A. Additional credit not to exceed ( ) years for military experience or alternative civilian service required by the Selective Service System and credit not to exceed ( ) years for Peace Corps, VISTA or National Teacher Corps work and time spent on a Fulbright Scholarship shall be given upon initial employment. As of the beginning of the 19 - school year, the aforementioned credit shall be given to any presently employed teacher who has not heretofore received it.

Paragraphs D.2. and E.: N.J.S.A. 18A:29-9 prescribes that initial placement on the salary schedule "shall be at such point as may be agreed upon". The board should retain the prerogative of such placement.

D.2. requires that the board grant credit for outside volunteer employment. This clause might result in the non-hiring of teaching personnel with this background because of the additional cost to districts.

E. Returning to the District

A teacher with previous teaching experience in the School District shall upon returning to the system receive full credit on the salary schedule for all outside teaching experience, military experience or alternative civilian service required by the Selective Service System, Peace Corps, VISTA or National Teacher Training Corps work and time spent on a Fulbright Scholarship up to the maximum set forth in Section B above. Such teachers who have not been engaged in other teaching or the other activities indicated above shall, upon returning to the system, be restored to the next position on the salary schedule above that at which they left.

F. Previous Sick Leave Accumulation

Previously accumulated unused leave days shall be restored to all returning teachers.

Paragraph F.: There is no statutory compulsion that boards grant such a provision.

G. Notification of Contract and Salary

Teachers shall be notified of their contract and salary status for the ensuing year no later than ----------.

Agreement as to dates involved in Article XI, paragraph G., should be made only after careful consultation with the superintendent.

Early notification dates have caused extreme difficulties in many districts.

Article XII, *Salaries*

A. Salary Schedule

The salary of each teacher covered by this Agreement is set forth in Schedule "A" which is attached hereto and made a part hereof.

B. Procedure for Withholding Employment

Regular salary guide increments excluding adjustment may be withheld in whole or in part for inefficiency or other just cause related to the performance of duties and only in accordnace with the following:

1. Subject to ARTICLE IV, Section C.

2. That the procedures be adhered to as outlined in ARTICLE XVIII, "Teacher Evaluation".

3. The immediate superior and/or the principal shall not forward any recommendation to withhold a teacher's increment or a part thereof through the superintendent to the Board unless at least (90) ninety calendar days prior thereto, and in no case later than April 1 of the preceding school year in which such action would take effect, the principal has given to the teacher against whom the recommendations shall be made, written notice of the alleged cause(s) for the recommendations specifying the nature thereof with such particulars as to furnish the teacher an opportunity to correct and overcome the same.

4. Once a recommendation is forwarded to the teacher and the Board, the teacher may within ten (10) school days file a grievance commencing at the Superintendent level. No action shall be taken on the recommendation until the grievance is heard according to the grievance procedure as set forth heretofore in ARTICLE III of this Agreement.

5. Any action by the Board to withhold an increment or any part thereof shall be subject to appeal to arbitration as set forth in ARTICLE III of this Agreement. The arbitrator shall have the authority to restore all or part of the increment withheld retroactively.

Paragraph B. of this article restricts the board's authority to withhold an increment to the extent that the action would be subject to the grievance procedure. More properly, the question of whether there was just cause for withholding of an increment should be decided by the Commissioner of Education as provided by law. (N.J.S.A. 19A:29-14).
(See **Employee Grievances**, earlier.)

There have been conflicting court decisions on the negotiability and arbitrability of withholding of increments. There is presently a case before the Supreme Court. But several courts have held this topic (the actual withholding) to be illegal. Therefore, B.1 (which refers to an earlier "just cause" provision), B.4 and B.5 (which refer to the grievability and arbitrability of the withholding) are, in the view of

those decisions, illegal agreements.

The first sentence of B. uses the phrase "excluding adjustment". Boards may presently withhold guide increments and adjustments. Because of the need for some real disciplinary technique (given the nature of the tenure system), boards should protect their right to withhold both forms of increased compensation.

6. Salary guide increment or part thereof withheld under this provision shall be restored the following year unless the procedures set forth in this provision are followed once again, in which case the increment or increments previously withheld and any additional increments which may be due may be withheld in whole or in part.

Does B.6 force the board to pay a teacher retroactively for an increment vaiidly withheld?

C. Method of Payment

1. Twelve (12) month

Each member employed on a twelve (12) month basis shall have the option of being paid in twenty-four semi-monthly installments or in twelve (12) monthly installments.

2. Ten (10) month

Each teacher employed on a ten (10) month basis shall have the option of being paid in twenty (20) equal semi-monthly installments, or ten (10) equal monthly installments.

3. Summer pay plan

Each teacher may individually elect to have ten (10%) percent of his monthly salary deducted from his pay. These funds shall be paid to the teacher or his estate on the final pay day in June, according to a schedule of payment throughout the summer as requested by the teacher, or upon death or termination of employment, if earlier.

4. Exceptions

When a pay day falls on or during a school holiday, vacation or week-end, teachers shall receive their pay checks on the last previous working day.

5. Final pay

Each teacher shall receive his final pay and the pay schedule for the following year on his last working day in June.

Agreements with respect to methods of payment must meet your own administrative needs and be consistent with legal requirements.

Article XIII, *Teacher Assignment*

All aspects of teacher assignment which are related to educational policy-making are illegal subjects. PERC will probably still hold that the procedures for assignment are required subjects.

Aspects of this article which relate to notice are probably required subjects. However, any agreement which limits the right to assign and transfer is illegal. For example, in A.3., disputes over the necessity of reassignment would be submitted to an arbitrator. As the decision in Ridgefield Park turned on the issues of transfer and reassignment, this is an illegal agreement.

A. Notification

1. Date for presently employed teachers

All teachers shall be given written notice of their salary schedules, class and/or subject assignments, building assignments and room assignments for the forthcoming year not later than A list of said schedules and assignments shall be simultaneously sent to the Association.

2. New teachers

The superintendent shall assign all newly-appointed personnel to their specific positions within that subject area and/or grade level for which the Board has appointed them. The superintendent shall give notice of assignments to new teachers as soon as practicable, and except in cases of emergency, not later than

3. Revisions

In the event that changes in such schedules, class and/or subject assignments, building assignments, or room assignments are proposed after , the Association and any teacher affected shall be notified promptly in writing and, upon the request of the teacher and the Association, the changes shall be promptly reviewed between the superintendent or his representative and the teacher affected and at his option a representative of the Association. In the event of any disagreement as to the need and desirability of such changes, the dispute shall be subject to the grievance procedure set forth herein.

B. Assignment Criteria

In order to assure that pupils are taught by teachers working within their areas of competence, teachers shall only be assigned to teach in areas for which they hold a standard teaching certificate issued by the New Jersey State Board of Examiners.

C. Traveling Teachers

1. Schedules

Schedules of teachers who are assigned to more than one school shall be arranged so that no such teacher shall be required to engage in an unreasonable amount of inter-school travel. Such teachers shall be notified of any changes in their schedules as soon as practicable.

2. Expenses

Teachers who may be required to use their own automobiles in the performance of their duties and teachers who are assigned to more than one (1) school per day shall be reimbursed for all such travel at the rate of (¢) cents per mile for all driving done between arrival at the first location at the beginning of their workday, provided, however, that if the distance from the teacher's home to his first location or from the teacher's last location to his home is greater than the distance between the teacher's home and his base school, he shall be reimbursed for the difference at the rate of (¢) cents per mile.

Article XIV, *Voluntary Transfers and Reassignments*

It may be acceptable to the board to agree to transfer procedures. Boards should always retain a sufficient degree of flexibility to deliver quality education to all students. But the decision to transfer and the criteria to be used for transfer are illegal subjects.

A. Notification of Vacancies

1. Date

No later than of each school year, the superintendent shall deliver to the Association and post in all school buildings a list of the known vacancies which shall occur during the following school year.

2. Filing requests

Teachers who desire a change in grade and/or subject assignment or who desire to transfer to another building may file a written statement of such desire with the superintendent. Such statement shall include the grade and/or subject to which the teacher desires to be assigned and the school or schools to which he desires to be transferred, in order of preference. Such requests for transfers and reassignments for the following year shall be submitted not later than

3. Posting

As soon as practicable, and no later than , the superintendent shall post in each school and deliver to the Association a system-wide schedule showing the names of all teachers who have been reassigned or transferred and the nature of such reassignment or transfer.

B. Criteria for Assignment

In the determination of requests for voluntary reassignment and/or transfer, the wishes of the individual teacher shall be honored to the extent that the transfer does not conflict with the instructional requirements and best interests of the school system. No such request shall be denied arbitrarily, capriciously, or without basis in fact. If a teacher's request for transfer has been denied, a renewed or subsequent request made in the following school year shall be granted under the conditions described above, unless there is no available position to which the teacher can be transferred or an adequate replacement for the teacher cannot be obtained. If more than one teacher has applied for the same position, the determination as to which teacher shall receive it shall be made by a joint committee consisting of two (2) persons appointed by the principal or immediate superior of the position in question and two (2) persons appointed by the Association.

B. This entire section is an illegal subject of bargaining.

Article XV, *Involuntary Transfers and Reassignments*

A. Use of Voluntary Requests

No vacancy shall be filled by means of involuntary transfer or reassignment if there is a qualified volunteer available to fill said position.

B. Notice

Notice of an involuntary transfer or reassignment shall be given to teachers as soon as practicable, and except in cases of emergency not later than

C. Criteria

When an involuntary transfer or reassignment is necessary, a teacher's area of competence, major or minor field of study, length of service in the School District, length of service in the particular school building, and other relevant factors, including, among other things, state and/or federal laws, rules, regulations or administrative directives, shall be considered in determining which teacher is to be transferred or reassigned.

A. and C. are clearly illegal subjects. It is probable that advanced notice of a transfer will be held by PERC to be a required subject.

D. Meeting and Appeal

An involuntary transfer or reassignment shall be made only after a meeting between the teacher involved and the (insert appropriate title) , at which time the teacher shall be notified of the reason therefor. In the event that a teacher objects to the transfer or reassignment at this meeting, upon the request of the teacher, the superintendent shall meet with him. The teacher may, at his option, have Association representative(s) present at such meeting.

D. The requirement that involuntary transfers occur only after meeting with a teacher, may be an illegal agreement. The legality of other aspects of D. must await further decisions of PERC and the court.

E. Priority in Reassignment

A list of open positions in the school district shall be made available to all teachers being involuntarily transferred or reassigned. Such teachers may request the positions, in order of preference, to which they desire to be transferred. All such teachers shall be given

E. The first three sentences are probably required subjects. It is likely that the fourth sentence is an illegal subject.

adequate time off for the purpose of visiting schools at which open positions exist. Teachers being involuntarily transferred or reassigned from their present position shall have preference over those seeking voluntary transfer or reassignment in regard to choice among those positions which are vacant. A teacher being involuntarily transferred or reassigned shall be placed only in an equivalent position – i.e., one which, among other things does not involve reduction in rank or in total compensation.

The fifth sentence turns on the phrase "equivalent position" and its legality or illegality may change from definition to definition. For example, a reading of such a clause which would forbid a demotion of a department chairman would be an illegal subject. However, insofar as the clause prohibits a salary reduction for a teacher reassigned from a full-time 8th grade position to a full-time 2nd grade position, it is probably legal.

Article XVI, *Promotions*

A. Positions Included

Promotional positions are defined as follows:

Positions paying a salary differential and/or positions on the administrator-supervisory levels of responsibility including but not limited to positions as (list by title)

All vacancies in promotional positions, including specialists and/or special projects teachers, pupil personnel workers and positions in programs funded by the federal government shall be adequately publicized by the superintendent in accordance with the following procedure:

1. Date of posting

When school is in session, a notice shall be posted in each school as far in advance as practicable, ordinarily at least thirty (30) school days before the final date when applications must be submitted and in no event less than fifteen (15) school days before such date. A copy of said notice shall be given to the Association at the time of posting. Teachers who desire to apply for such vacancies shall submit their applications in writing to the superintendent within the time limit specified in the notice, and the superintendent shall acknowledge promptly in writing the receipt of all such applications. Applications shall be kept on file in the superintendent's office for continual consideration for future vacancies until the office is notified in writing by an applicant that the application is withdrawn.

2. Application procedure

Teachers who desire to apply for a promotional position which may be filled during the summer period when school is not regularly in session shall submit their names to the superintendent, together with the position(s) for which they desire to apply, and an address where they can be reached during the summer. The superintendent shall notify such teachers of any vacancy in a position for which they desire to apply. Such notice shall be sent as far in advance as practicable, ordinarily at least twenty-one (21) days before the final date when applications must be submitted and in no event less than fourteen (14) days before such date. In addition, the superintendent shall, within the same time period, post a list of promotional positions to be filled during the summer period at the administration office, in each school, and a copy of said notice shall be given to the Association.

If the board agrees to a notification procedure for promotions, the time limits agreed-upon must be feasible.

The proposed definition of promotion should include reference not only to increased salary or salary differential, but should also make clear that extra work and/or extra pay assignments should not constitute promotions.

There appears to be no good reason to require the superintendent to acknowledge a request for a promotion; if, however, such acknowledgement must be made, it should be nothing more than a simple form reply.

The superintendent should not be required to maintain a continuous file nor be required to constantly review old applications until such applications are withdrawn. A new application should be required for each vacancy.

It should be stated definitely and clearly that it is the function of the superintendent to determine the qualifications required for any promotion.

B. Criteria for Notice

In both situations set forth in Section A above, the qualifications for the position, its duties, and the rate of compensation, shall be clearly set forth. The qualifications set forth for a particular position shall not be changed when such future vacancies occur unless the Association has been notified in advance of such changes and the reasons therefor. A disagreement over the necessity for such changes shall be subject to the grievance procedures set forth in this Agreement. No vacancy in a promotional position shall be filled other than in accordance with the above procedure.

B. The first sentence is a required subject of negotiations. The balance of the clause is an illegal subject.

C. Two Optional Plans (Select One)

Option (a)

All qualified teachers shall be given adequate opportunity to make application and no position shall be filled until all properly submitted applications have been considered. The Board agrees to give due consideration to the professional background and attainments of all applicants, and other relevant factors. In filling such vacancies, preference shall be given to qualified teachers already employed by the Board and when all other factors are substantially equal, length of time in the School District shall be the deciding factor. Each teacher applicant not selected shall, upon request, receive a written explanation from the superintendent. Appointments shall be posted in the schools or the giving of notification to the interested teachers. Announcements of appointments shall be made by posting a list in the office of the central administration

C. As with many Sample Agreement clauses, this one appears to have required and illegal elements in it.

For example, in C. Option (a), the first sentence and sentences four through seven appear to be procedural issues normally held by PERC to be required subjects.

However, the third sentence goes to the criteria for promotion and will probably be ruled an illegal clause.

and in each school building. The list shall be given to the Association and shall indicate which positions have been filled and by whom.

Option (b)

1. All qualified teachers shall be given adequate opportunity to make application for such positions and no positions shall be filled until all properly submitted applications have been considered. The Board agrees to give due weight to the professional background and attainments of all applicants and other relevant factors. In filling such vacancies, preference shall be given to qualified teachers already employed by the Board and when all other factors are substantially equal, length of time in the School District shall be the deciding factor.

2. All promotional positions shall be filled according to the following procedures:

a. Each applicant who meets the qualifications for a vacancy shall be interviewed by a committee of ( ) persons, ( ) appointed by the superintendent and ( ) appointed by the president of the Association, and a record of the interview shall be filed with the application. Interview ratings for each applicant shall be prepared independently by each member of the committee.

b. The committee shall then combine the independent interview ratings, together with the applicant's formal training, professional experience and experience in the School District into a total rating.

c. All applicants shall be placed on a ranked list according to their total ratings.

d. Selection for a vacancy shall be made from among the three (3) top ranking applicants by the superintendent with the approval of the interviewing committee.

3. Appointments shall be made not later than sixty (60) days after the notice is posted in the schools or the giving of notification to the interested teachers. Announcements of appointments shall be made by posting a list in the office of the central administration and in each school building, and a list shall be given to the Association indicating which positions have been filled and by whom.

C. Option (b). The first sentence under 1. is probably a procedural matter as is the second sentence of 3. The balance of Option (b), including the creation of a committee, would appear to intrude upon educational policy-making and be, therefore, illegal.

Article XVII, *Accredited Evening High School – Summer School – Home Teaching and Federal Programs*

The first question concerning this article is: are evening high school and summer school program personnel included in your bargaining unit? If they are not, there should be no negotiations over the terms and conditions of employment for those positions.

Even if certain positions are not included in the bargaining unit, requirements for notification of position openings is a required subject (no concessions must be made in this area). The dates contained in A. may be too early in some districts.

A. Posting

All openings for positions in the accredited evening high school, summer school, home teaching, federal projects, and other programs (including non-teaching positions for which teachers may be qualified and eligible) shall be publicized by the superintendent in accordance with the procedure for publicizing promotional vacancies set forth in ARTICLE XVI, Sections A and B of this Agreement. Summer school and accredited evening high school openings shall be publicized not later than the preceding March 1 and June 1 respectively and teachers shall be notified of the action taken not later than May 1 and September 1, respectively. Home teaching openings shall be posted as they occur.

B. Criteria

In filling such positions, consideration shall be given to a teacher's area of competence, major and/or minor field of study, quality of teaching performance, attendance record, and length of service in the School District. When all other factors are substantially equal, preference shall be given first to teachers who have taught the subject area and/or grade level in question during the regular school year and then to teachers who have taught the grade and/or subject in question on a regular basis at any time during the preceding ( ) years. Teachers employed in the School District shall have priority to such assignments before appointment to applicants from outside the district.

It would seem that Ridgefield Park rendered B. illegal.

C. Salary

Salary schedules for positions included in this ARTICLE shall be negotiated under procedures outlined in ARTICLE II of this Agreement along with regular salary schedules wherever possible, or at such other times as may be appropriate in order to conform to the time requirements for the implementation of said programs.

D. Coverage by Master Agreement

All of the provisions of this Agreement shall apply to teachers holding positions in the accredited evening high school, summer school, home teaching and/or under federal programs, except where clearly inapplicable .

Again, C. and D. relate to terms and conditions of employment and should not be a subject of negotiations unless these positions are included in the bargaining unit.

This article will grow in importance this year and in years to come. No area may be changing more rapidly. The controversy engendered by evaluation rules combined with strong public pressure to make teacher evaluation more meaningful, will guarantee PERC, court and Commissioner of Education review of all aspects of evaluation. You must consult your board attorney, professional negotiator and the NJSBA. In December, 1978, the NJSBA will publish a manual entitled **School Staff Evaluation in New Jersey** which will fully explore evaluation. Included in that manual will be a section on collective bargaining implications.

The teacher evaluation system goes to the heart of educational policy. The bases upon which administrators evaluate employees are not negotiable subjects. They must be set by the board together with its administration and cannot be limited by the terms of the agreement.

The parties may agree to include existing laws and regulations in the labor agreement which set terms and conditions of employment in the area of teacher evaluation. But educational policies set in those statutes or regulations are neither negotiable nor arbitrable. For example, a board may not negotiate to delete tenured teaching staff evaluations because the Administrative Code requires an annual evaluation for all tenured teaching staff members.

Since Chapter 132 now covers nontenured evaluation, many boards will feel the legal protections afforded nontenured teachers are sufficient.

A. Evaluation Committee

1. Membership

No later than September 15, 19 , the Board and the Association agree to establish an Evaluation Committee consisting of ( ) members, ( ) members appointed by the Board, and ( ) members appointed by the Association.

Because the criteria for evaluation is an illegal subject, the creation of a committee, not wholly composed of the board, is also an illegal subject. While the board should encourage wide professional involvement in evaluation criteria development, that involvement may not exclude the public or even individual teachers by resulting in a negotiated agreement with the union.

2. Responsibility

This Committee shall develop specific criteria and recommend additional procedures for the evaluation of teachers.

3. Report date

The recommended criteria and procedures shall be submitted for adoption to the Board and the Association no later than December 15, 19 , and shall become an addendum to this Agreement.

B. Nontenure Teachers

1. Frequency

Nontenure teachers shall be evaluated by their immediate superiors at least ( ) times in each school year, to be followed in each instance by a written evaluation report and by a conference between the teacher and his immediate superior for the purpose of identifying any deficiencies, extending assistance for their correction and improv-

You may agree contractually to carry out evaluation procedures set by law and regulation. You may not agree contractually to avoid law or regulation. While some aspects of B.1. may be

ing instruction. Such evaluation in each instance shall consist of at least ( ) in-classroom observations of at least ( ) minutes, each occurring on separate days and any other criteria for evaluation recommended by the Evaluation Committee established in Section A of this ARTICLE and approved by the Board and Association.

procedural in nature, the last three lines go to criteria and are illegal.

2. Review

Violations of or disagreements over any of the provisions of this ARTICLE in cases involving nonrenewal of contract or termination of employment of nontenure teachers shall be subject to review under the Fair Dismissal Procedure established in ARTICLE XIX of this Agreement and shall be considered grounds for reinstatement without loss of pay or any other benefit provided by this Agreement.

B.2. Alleged violation of evaluation procedures can, under **West Windsor,** be grievable to at least one step of a grievance procedure. And the parties may further agree to submit those procedures which are required to be negotiated under C.123 to a full grievance procedure up to and including binding arbitration.

An arbitrator may not review the criteria for evaluation of non-tenured employees.

C. General Criteria

1. Open evaluation

All monitoring or observation of the work performance of a teacher shall be conducted openly and with full knowledge of the teacher. The use of eavesdropping, public address, cameras, audio systems, and similar surveillance devices shall be strictly prohibited.

2. Evaluation by certificated supervisors

Teachers shall be evaluated only by persons certificated by the New Jersey State Board of Examiners to supervise instruction.

3. Copies of evaluation

A teacher shall be given a copy of any class visit or evaluation report prepared by his evaluators at least one (1) day before any conference to discuss it. No such report shall be submitted to the central office, placed in the teacher's file or otherwise acted upon without prior conference with the teacher. No teacher shall be required to sign a blank or incomplete evaluation form.

4. Standardized tests

Results of standardized tests used for evaluating students shall not be used to evaluate teacher performance.

C.1. and 3. are probably **procedural** and, therefore, required subjects. C.2. and C.4. are most likely illegal subjects.

In addition, recent State Board of Education actions on tenured teaching staff evaluation highlight the critical nature of this clause. While this portion of the article deals with non-tenured personnel, the new code is enlightening. N.J.A.C. 6:3-1.21(f.)(4) reads: *"The annual written performance report shall be prepared by a certified supervisor who has participated in the evaluation of the teaching staff member and shall include but not be limited to: A summary of available indicators of pupil progress and growth, a statement of how these indicators relate to the effectiveness of the overall programs and the performance of the individual teaching staff member."*

Any agreement to eliminate any "available indicators of pupil progress" would be a violation of the code and an illegal subject.

D. Evaluation Procedure

No negotiated evaluation procedure may contravene existing law or regulation. And it is very possible that no negotiated procedure can preclude an employer from effectively evaluating employees. The determination of "effectively evaluate" would appear to be a board obligation within the framework of the evaluation rules and subject to the review of the Commissioner and the State Board.

1. Communication

Prior to any evaluation report the immediate superior of a teacher shall have had appropriate communication, including but not limited to all steps in paragraph 2 below and

D.1. and D.2.a. and b. would appear to be **procedural.** D.2.c. insofar as it requires a "narrative" form is probably

the provisions of ARTICLE XXVIII, Section B of this Agreement with said teacher regarding his performance as a teacher.

2. Reports

Evaluation reports shall be presented to each teacher by his immediate superior in accordance with the following procedures:

a. Such reports shall be issued in the name of the immediate superior based on a compilation of reports and observations by any or all supervisory personnel who come into contact with the teacher in a supervisory capacity.

b. Such reports shall be addressed to the teacher.

c. Such reports shall be written in narrative form and shall include, when pertinent:

(1) Strengths of the teacher as evidenced during the period since the previous report.

(2) Weaknesses of the teacher as evidenced during the period since the previous report.

(3) Specific suggestions as to measures which the teacher might take to improve his performance in each of the areas wherein weaknesses have been indicated.

not a term and condition of employment. The requirement in D.2.c.(1)(2) and (3) that evaluation cover the strengths, weaknesses and improvement activities of the evaluated teacher is probably a required subject. The criteria for strength, weakness or improvement are not themselves negotiable subjects, only the extent to which they must be reported to the affected employee.

E. Personnel Records

1. File

A teacher shall have the right, upon request, to review the contents of his personnel file and to receive copies at Board expense of any documents contained therein. A teacher shall be entitled to have representative(s) of the Association accompany him during such review. At least once every ( ) years, a teacher shall have the right to indicate those documents and/or other materials in his file which he believes to be obsolete or otherwise inappropriate to retain. Said documents shall be reviewed by the superintendent or his designee and if, in fact, they are obsolete or otherwise inappropriate to retain, they shall be destroyed. Disputes over the retention of said documents may be processed through the grievance procedure, commencing at Level Two.

Paragraph E., clause 1: To make disputes over whether or not materials included in the personnel file shall be expunged subject to the grievance process seems unwise. Since teachers generally have the ability to rebut materials contained in the file there seems little reason to become involved in controversy concerning expungement.

2. Derogatory material

No material derogatory to a teacher's conduct, service, character or personality shall be placed in his personnel file unless the teacher has had an opportunity to review the material. The teacher shall acknowledge that he has had the opportunity to review such material by affixing his signature to the copy to be filed with the express understanding that such signature in no way indicates agreement with the contents thereof. The teacher shall also have the right to submit a written answer to such material and his answer shall be reviewed by the superintendent or his designee and attached to the file copy.

3. No separate file

Although the Board agrees to protect the confidentiality of personal references, academic credentials and other similar documents, it shall not establish any separate personnel file which is not available for the teacher's inspection.

F. Termination of employment

Final evaluation of a teacher upon termination of his employment shall be concluded prior to severance and no documents and/or other material shall be placed in the personnel file of such teacher after severance or otherwise than in accordance with the procedure set forth in this ARTICLE.

Article XIX, *Fair Dismissal Procedure*

In 1975, the Legislature enacted a statute and the State Board of Education enacted rules more specifically enforcing the rights of nontenured teachers set forth in the Donaldson case.

It is important to note that Chapter 132 does not alter the basic relationship between a board and its nontenured teachers. The nature of a nontenured teacher's contract of employment with a school board is one for personal services with a commencement and a terminating date. When the terminal date has been reached, the contract is discharged and there are no longer any rights, duties, or obligations chargeable to either party to the previous agreement. In short,

no relationship binding in law exists between the parties, and so it has been held in several instances by the Courts of the State of New Jersey.

A. Fair Dismissal Committee

1. Membership

No later than September 15, 19 , the Board and the Association agree to establish a Fair Dismissal Committee consisting of ( ) members, ( ) members appointed by the Board and ( ) members appointed by the Association.

Because criteria for dismissal is an illegal subject, a committee to develop such criteria is also an illegal subject. Any committee established by negotiations must be limited to required subjects, i.e. procedures for dismissal.

2. Responsibility

This Committee shall develop specific criteria which shall be used for nonrenewal of contract or termination of employment for nontenure teachers.

3. Report date

The recommended criteria shall be submitted for adoption to the Board and the Association no later than December 15, 19 , and shall become an addendum to this Agreement.

4. Distribution to nontenure teachers

The Board shall provide said criteria to all presently employed nontenure teachers, as soon as possible after adoption.

A.4. is a term and condition of employment.

B. Notification of Status

1. Date

On or before April 30 of each year, the Board shall give to each nontenure teacher continuously employed since the preceding September 30 either:

a. A written offer of a contract for employment for the next succeeding year providing for at least the same terms and conditions of employment but with such increases in salary and benefits as may be required by law or agreement between the Board and the Association, or

b. A written notice that such employment shall not be offered.

B.1. is a restatement of law and unnecessary.

2. Reasons

Any nontenure teacher who receives a notice of nonemployment may within five (5) days thereafter, in writing, request a statement of reasons for such nonemployment from the superintendent, which statement shall be given to the teacher in writing within five (5) days after receipt of such request.

B.2. is a paraphrase of law and changes the board's legal obligations. 18A:27-3.2 requires that the board supply a written statement of reasons within thirty days, not the five listed in this sample clause. For some reason, this clause again attempts to decrease teachers' statutory rights to request reasons from the present fifteen days to five.

3. Hearing

Any nontenure teacher who has received such notice of nonemployment and statement of reasons shall be entitled to a hearing before the Board, provided a written request for hearing is received in the office of the secretary of the Board within five (5) days after receipt by the teacher of the statement of reasons.

B.3. The Administrative Code very specifically requires an informal appearance, not a hearing. It is not to be an adversary proceeding; it should be of reasonable length; the teacher may be represented by one person or counsel; witnesses may be presented with no cross-examination; appearances shall be in private.

4. Board determination

The Board shall issue its written determination as to the employment or nonemployment of said nontenure teacher for the next succeeding school year within five (5) days after the completion of the hearing. Said proceedings shall be completed and the Board's determination presented to the teacher no later than May 31.

B.4. The Administrative Code supporting the non-tenure evaluation law requires that the board's written determination be issued within three days of the informal appearance, not the five days listed in this clause.

Additionally, there is no requirement that a written decision issue

prior to May 31st. Assume that notice not to reemploy was given on April 30th. The statement of reasons is requested on May 15th. The reasons are given on June 14th. On June 24th (the ten day period set forth in Administrative Code), the affected teacher seeks an appearance which is held on July 24th, with a written determination issued on July 27th. Of course, most boards will proceed more quickly than this but if both parties exhausted each time limit, there would be no way to finish the process before late July.

5. Appeal to grievance procedure
If the teacher disagrees with the determination of the Board, he may submit the dispute through the grievance procedure as set forth in ARTICLE III of this Agreement, and said grievance shall commence at Level 3. In the event said grievance is submitted to arbitration, the arbitrator may restore the teacher to continued employment and may restore any loss of pay and/or benefits retroactively to which the teacher would be entitled under the terms and conditions of employment required by law or this Agreement between the Board and the Association.

B.5. Those aspects of this grievance clause which relate to the right of employees to grieve violations of procedural aspects of dismissal are valid. Those aspects of this grievance clause which relate to the right of employees to grieve over criteria for dismissal are illegal.

C. Failure to Comply
Should the Board fail to give a nontenure teacher either an offer of contract for employment for the next succeeding year or a notice that such employment shall not be offered and upon request by the teacher to the superintendent, a statement of reasons and a hearing, and in the event of such hearing shall fail to make and serve a copy of the determination, all within the time and in the manner provided by this ARTICLE, the Board shall be deemed to have offered to that teacher continued employment for the next succeeding school year upon the terms and conditions of employment as may be required by law or agreement between the Board and the Association.

D. Notification of Intention to Return
If the teacher desires to accept such employment, he shall notify the Board of such acceptance, in writing, on or before June 1, in which event such employment shall continue as provided for herein. In default of such notice the Board shall not be required to continue the employment of the teacher.

E. Termination of Employment
Any nontenure teacher who receives a notice that his employment shall be terminated shall be entitled to a statement of reasons and a hearing as provided for in paragraphs 2, 3, 4, and 5 of this Section except that a determination of the Board shall be made and served thirty (30) days before the expiration of the notice period provided for in said contract. Should the Board fail to comply therewith, then said notice of termination shall be invalid and of no force and effect and the employment of the teacher shall continue as if such notice had not been given.

Article XX, *Complaint Procedure*

A. Procedural Requirement
Any complaints regarding a teacher made to any member of the administration by any parent, student, or other person which does or may influence evaluation of a teacher shall be processed according to the procedure outlined below.

B. Meeting with Principal or Immediate Superior
The principal or immediate superior shall meet with the teacher to apprise the teacher of the full nature of the complaint and they shall attempt to resolve the matter informally.

C. Right to Representation
The teacher shall have the right to be represented by the Association at any meetings or conferences regarding such complaint.

The essence of this article deals with a complaint lodged against a teacher, generally from an outside non-administrative source for which the teacher grieves for relief and remedy against a potential damaging influence which such complaint may have against the teacher's evaluation report.

Very few boards have any form of complaint procedure in their agreement.

It would appear that Paragraph A.,

D. Procedure

Step 1.
In the event a complaint is unresolved to the satisfaction of all parties, the teacher may request a conference with the complainant to attempt to resolve the complaint. If the complaint is unresolved as a result of such conference or if no mutually acceptable conference can be agreed on, the complaint shall move to Step 2.

Step 2.
Any complaint unresolved under Step One at the request of the teacher or the complainant shall be reviewed by the building principal or counterpart supervisor in an attempt to resolve the matter to the satisfaction of all parties concerned.

Step 3.
Any complaint unresolved at Step Two may be submitted in writing by the complainant or the teacher to the building principal or counterpart supervisor who shall forthwith forward a copy to the superintendent or his designee and the complainant.

Step 4.
Upon receipt of the written complaint the superintendent or his designee shall confer with all parties. The teacher shall have the right to be present at all meetings of the superintendent or his designee and the complainant.

Step 5.
If the superintendent or his designee is unable to resolve a complaint to the satisfaction of all parties concerned, at the request of the complainant or the teacher he shall forward the results of his investigation along with his recommendation, in writing, to the Board and a copy to all parties concerned.

Step 6.
After receipt of the findings and recommendations of the superintendent or his designee, and before action thereon, the Board shall afford the parties the opportunity to meet with the Board and show cause why the recommendations of the superintendent or his designee should not be followed. Copies of the action taken by the Board shall be forwarded to all parties.

Step 7.
Any complaint unresolved under Step 6, may be submitted by the teacher to the grievance procedure as set forth in ARTICLE III of this Agreement and shall commence at Level 3.

B. and C. of this article should alone suffice to ensure fair and equitable treatment to any complaint so lodged against a teacher.

Article XXI, *Teacher Facilities*

A. Listing of Facilities
By the beginning of the 19 - school year, each school shall have the following facilities:

1. All rooms which are used for purposes of instruction during any portion of the months of May, June, July, August, September, and October shall be air conditioned;
2. Space for each teacher within each instructional area in which he teaches to store his instructional materials and supplies;
3. An air-conditioned teacher work area containing adequate equipment and supplies to aid in the preparation of instructional materials;
4. An appropriately furnished and air-conditioned room which shall be reserved for the exclusive use of teachers as a faculty lounge. Although teachers shall be expected to exercise reasonable care in maintaining the appearance and cleanliness of said lounge, it shall be regularly cleaned by the school's custodial staff.
5. A private pay telephone in each faculty lounge for the exclusive use of teachers;
6. A serviceable desk, chair, and filing cabinet for the exclusive use of each teacher;
7. A communication system so that teachers can communicate with the main building office from their classrooms;
8. Well-lighted and clean teacher rest rooms, separate for each sex and separate from the student's rest rooms;
9. A separate, private dining area for the exclusive use of the teachers;
10. Free and adequate off-street paved parking facilities, which are protected against vandalism, properly maintained, and identified exclusively for teacher use;
11. Suitable, private closet space with lock and key for each teacher to store coats, overshoes, and personal articles;
12. Copies, exclusively for each teacher's use, of all texts used in each of the courses he is to teach;
13. Adequate chalkboard space in every classroom;
14. A complete and unabridged dictionary in every classroom;
15. Adequate books, paper, pencils, pens, chalk, erasers and other such material required in daily teaching responsibility.

All of the items demanded in paragraph A. must be questioned in light of the existing facilities in the district to determine the extent of change or if, indeed, change is at all possible or necessary.

Any item involving the building or improvement or the use of space within the building should hinge first upon the requirements for classrooms. The board should reject such specific agreement as requested. Paragraph B. must be considered strictly as a cost item.

B. Special Clothing
By the beginning of the 19 - school year, the Board shall provide gym uniforms for physical education teachers, smocks for art and home economics teachers, laboratory coats for laboratory science teachers, shop coats for vocational and industrial arts teachers. Proper laundering service for all of said items shall be provided without charge to the teacher.

C. Work Room and Office
By the beginning of the 19 - school year, an appropriate room and other facilities for teachers who work in more than one school building shall be assigned to them in each school in which they work to permit the effective discharge of their responsibilities to their pupils. Such teachers shall also be assigned a single classroom or office for their exclusive use outside of regular teaching hours, with a desk or other equivalent facility and a place to store materials and supplies for their personal use.

Paragraph C. again presents a question concerning the allocation of space in specific schools. It must be examined by the board in light of maintenance of flexibility with respect to the utilization of space, now and in the future.

D. Answering Service
The Board agrees to provide an answering service between p.m. and a.m. for teachers to report unavailability for work. Once a teacher has reported unavailability, it shall be the responsibility of the administration to arrange for a substitute.

E. Vending Machines
Upon the request of the Association, vending machines shall be installed in the teachers' lounge and teachers' lunchroom areas. The proceeds from all such machines shall be placed in a student scholarship fund created for that purpose. Awarding of scholarships shall be administered jointly by the Association and the superintendent. The Teacher-Administration Liaison Committee in each building established according to the provisions of ARTICLE XXII of this Agreement shall develop mutually acceptable procedures for servicing said machines and accounting for the funds.

F. Keys
In order to permit freedom of access both during and after regular school hours, all teachers shall be given keys to the faculty lounge, teacher work area, and interior hallway gates of their base school, and, upon request, and subject to reasonable regulation, shall be provided with a key or other means of access to an outside door in their area of the building during nonschool hours.

Paragraph F. presents essentially a security problem with respect to the distribution of keys, and therefore, it must be so examined.

G. Student Transportation
By the beginning of the 19 - school year, the Board shall provide a vehicle and a driver for the transportation of individual students or small groups of students. Said vehicle and driver shall be used to transport sick students from school to home during the course of the school day.

This is not a term and condition of employment and, therefore, an illegal subject.

Article XXII, *Teacher-Administration Liaison*

A. Building Level Faculty Council

1. Organization
The Association shall select a Faculty Council for each school building which shall meet with the principal at least once a month during the school day for the duration of the school year. Said Council shall consist of not more than one (1) member for every ( ) teachers in the school building, but shall in no event have less than ( ) members.

A. To the extent that such a committee would deal with terms and conditions of employment, this is a required subject. For example, any committee created to carry out A.2.a. would be valid. And as long as "revision and development of building policies and practices" listed in A.2.c. was limited to terms and conditions of employment that agreement too would be legal.

2. Areas for Faculty Council consideration
Areas for consideration by the Council shall include but not be limited to school building level decisions regarding:

a. Administration of this Agreement;
b. Facilitation of programs and recommendations of the Instructional Council hereafter established in ARTICLE XXIII of this Agreement;
c. Revision and development of building policies and practices.

A.2.b. and a committee under A.2.c. which dealt with major educational policy would be illegal. The board may create such a committee outside of the bargaining agreement but may not negotiate to create it.

B. Meetings with Superintendent
The Association's representatives shall meet with the superintendent at least once a month during the school year to review and discuss current school problems and practices and the administration of this Agreement

Article XXIII, *Instructional Council*

A. Organization

1. Purpose

An Instructional Council shall be established and shall meet not later than 19 . The purpose of the Council shall be to strengthen the education program through recommendations, research, implementation, and evaluation by the superintendent and the Association to best meet the needs of the students, the schools, and the community. The Council may consider, but not be limited to, advising the Board and the Association on such matters as curriculum improvements, teaching techniques, instructional organizational patterns, experimentation, extra curricular programs, in-service training and staff development, pupil testing and evaluation, philosophy and educational goals of the district, teacher recruitment, research, educational specifications for buildings, and other related matters regarding the effective operation of the School District.

2. Membership

The Council shall consist of ( ) representatives appointed by the superintendent and ( ) representatives appointed by the Association.

3. Committees

The Council shall be authorized to establish sub-committees or ad hoc committees for specific projects to allow for those who would be affected by Council recommendations to have an opportunity to be involved.

4. Individual initiative for suggestions

The Council shall encourage the initiation of ideas and suggestions for projects by individual teachers, departments, grade levels, Association committees, administrators, Board members, students, parents, or other interested parties.

5. Additional members

Nothing in this ARTICLE shall be interpreted to prevent the Council from consulting or appointing to its committees such additional teachers, administrators, professional advisors, students, parents, or other persons as the original members herein designated shall determine are desirable and appropriate for said purposes. In the event that professional consultants are added, the Board agrees to provide adequate funds to pay for each such service.

6. Rules of procedure

The Council shall establish its own rules of procedure and shall provide for a rotating chairman who shall be responsible for the arrangement and conduct of meetings.

7. Meetings

The Council shall meet at least once each month.

8. Information

The Council and its sub-committees shall be provided with the same access to available school district information as provided to the Association as specified in ARTICLE V, Section A of this Agreement.

B. Reports

1. Board and Association action

The Board and the Association shall consider and study all written recommendations submitted by the Council for action. If the Board or the Association refuses to adopt any such recommendations, it shall state the specific reasons for such refusal in writing to the Council.

2. Minority reports

Reports of the Council or any sub-committee established by the Council may include minority as well as majority views.

C. Budget

As of September 1, 19 , the Board shall provide ($) dollars to the Instructional Council for the purpose of assisting said Council in establishing effective procedures for decision-making in implementing the responsibilities stated above in the School District.

D. Teacher Participation

1. Pay

Teachers who serve on the Instructional Council or any sub-committee organized by it beyond the regularly scheduled in-school day or in-school year shall be paid at the rate specified in ARTICLE VII, Section A, paragraph 4 of this Agreement.

2. Released time

In addition to whatever unassigned time they may be entitled to under the terms of this Agreement, teachers who are members of the Instructional Council or any of its sub-committees shall be provided with released time at the following rate for the purpose of working on any of the projects defined above:

a. Elementary Schools – ( ) periods per day
b. Junior High Schools – ( ) periods per day
c. Senior High Schools – ( ) periods per day
d. Other – ( ) periods per day

E. Clerical Assistance

Adequate secretarial and clerical assistance shall be provided for the Council.

Any committee created by contract and designed to control or even advise on major educational policies is invalid. Committees (not established by the board but negotiated) which control policy are illegal under **Ridgefield Park**. Committees which advise on this type of policy do not deal with a term and condition of employment. Public employers may only negotiate over terms and conditions of employment. (See **Negotiations, Consultation and Sound Personnel Relations**, earlier.)

A., B., C. and E. are illegal subjects. The payment of employees on board-created committees dealing with policy would be a required subject. If D. deals with such a committee it is a required subject.

Article XXIV, *Sick Leave*

A. Accumulative
As of September 1, 19 , all teachers employed shall be entitled to ( ) sick leave days each school year as of the first official day of said school year whether or not they report for duty on that day. Unused sick leave days shall be accumulated from year to year with no maximum limit.

B. Transfer from Other Districts
As of September 1, 19 , whenever the Board employs a teacher who has an unused accumulation of sick leave days from another school district in New Jersey, the Board shall grant additional sick leave credit in addition to the annual and accumulated sick leave provided in Section A of this ARTICLE as follows:

1. For the first year of employment in the School District a minimum of ( ) days or such lesser amount as may have been accumulated in the former district.
2. For each subsequent year of employment in the School District an additional ( ) days until all of the days accumulated in the former district have been credited.
3. The accumulation of sick leave days from another district shall be credited in accordance with the procedure outlined above after certification from the prior employing school district. The days of sick leave so credited may be used immediately or if not so used shall be accumulative for additional leave thereafter as may be needed.
4. The aforementioned sick leave credit shall be given to any presently employed teacher under the provisions described above.

C. Nonaccumulative
Nonaccumulative additional sick leave benefits shall be allowed to teachers according to the following schedule:

(Local Association option on type of additional nonaccumulative sick leave to be submitted.)

The amount of sick leave granted beyond ten days a year is purely a matter of economic ability and educational need. Any concession in this area should achieve an equivalent concession by the union.

PERC has held, consistent with Commissioner's prior decisions that, under Chapter 303, automatic grants of sick leave beyond accumulated days were prohibited by 18A:30-6 and are an illegal subject. Boards may negotiate sick leave time in excess of the statutory minimum provided the board retains the ability to and actually does make the decision to grant extended sick leave on a case-by-case basis and that no employee may increase his total accumulation by more than fifteen days in any year.

A 1978 Commissioner's Decision creates some questions with respect to this area. The matter, involving the Ramsey Board is currently on appeal to the State Board of Education. The results of that decision will be communicated to you.

Accumulation of sick leave and transfer from other districts are not required by law. Unused sick leave accumulation might discourage the abuse of sick leave provisions. However, when combined with F. unlimited accumulation could be very costly to the district.

D. Summer School
As of September 1, 19 , teachers employed in the summer school program shall be granted ( ) nonaccumulative sick leave days.

Paragraph D. covers summer school, an area that should not be covered by the contract.

E. Notification of Accumulation
Teachers shall be given a written accounting of accumulated sick leave days no later than September of each school year.

F. Retirement
Upon retirement, the retiring teacher shall be compensated for his or her accumulated sick leave at the rate of pay at the time of retirement.

Paragraph F.'s requirement that the board pay for unused sick leave at the current rate of pay for a retiring teacher does not seem warranted. This clause is particularly dangerous because it is almost impossible to compute its eventual cost.

Article XXV, *Temporary Leaves of Absence*

A. Types of Leave
As of the beginning of the 19 - school year, teachers shall be entitled to the following temporary nonaccumulative leaves of absence with full pay each school year:

1. Personal
( ) days leave of absence for personal, legal, business, household or family matters which require absence during school hours. Application to the teacher's principal or other immediate superior for personal leave shall be made at least ( ) day(s) before taking such leave (except in the case of emergencies) and the appli-

Paragraph A.1., Personal Leave: The board may desire to require advance approval and a statement of reason. Paragraph A.2. through 9. are economic and educational necessity items. Concessions on any or all of them should achieve union conces-

cant for such leave shall not be required to state the reason for taking such leave other than that he is taking it under this Section.

2. Religious

Up to ( ) days per school year for observance of religious holidays, where said observance prevents the teacher from working on said days.

3. School visitation

Up to ( ) days for the purpose of visiting other schools or attending meetings or conferences of an educational nature.

4. Community service leave

Any teacher who is a member of a community service organization or who is requested by any such organization to attend or participate in meetings or programs of the organization conducted during school hours shall be granted time off with pay for such purpose upon request.

5. Conferences of affiliates

Up to ( ) days for ( ) representatives of the Association to attend conferences and conventions of state and national affiliated organizations.

6. Legal

Time necessary for appearances in any legal proceeding connected with the teacher's employment or with the school system or in any other legal proceeding if the teacher is required by law to attend.

7. Death

Up to ( ) days at any one time in the event of death or serious illness of a teacher's spouse, child, son-in-law, daughter-in-law, parent, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, and any other member of the immediate household. Teachers shall be granted up to ( ) days in the event of death of a teacher's friend or relative outside the teacher's immediate family as defined above. In the event of the death of a teacher or student in the School District, the principal or immediate superior of said teacher or student shall grant to an appropriate number of teachers sufficient time off to attend the funeral.

8. Summer school

Up to a total of ( ) days at the end of a school year and/or at the beginning of a school year, as may be required to attend summer school classes and/or to travel to the place where such classes are to be held.

9. Marriage and honeymoon

Up to ( ) days for the purpose of marriage and honeymoon or up to ( ) days for the purpose of attending the marriage of a member of the immediate family.

10. Temporary Military

Time necessary for persons called into temporary active duty of any unit of the U. S. Reserves or the State National Guard. A teacher shall be paid his regular pay in addition to any pay which he receives from the state or federal government.

11. Good cause

Other leaves of absence with pay may be granted by the Board for good reason.

B. In Addition to Sick Leave

Leaves taken pursuant to Section A above shall be in addition to any sick leave to which the teacher is entitled.

C. NJEA Convention

Each teacher who attends the NJEA Convention shall fully be compensated for all costs incurred for travel, tolls, meals and hotel.

sions. Again, boards may desire to require advance approval. 4. and 6. are potentially costly beyond reason. 6. at the very least should not include legal appearances by a teacher flowing out of discipline or discharge unless the decision of the board is reversed by the Commissioner.

A., 11. can present serious difficulties especially to boards who have "past practice" or "savings clauses." The granting of additional leaves might establish an unwanted precedent. Unfortunately, a labor contract sometimes has the effect of limiting the ability of an employer to grant fringe benefits in excess of the contract simply because the employer's concern for employees in a given situation can require the employer to grant the same benefit in all similar cases.

C. First, Chapter 123 as noted earlier, prohibits an employer from assisting a union. The NJEA is a union. While no decision in this area

has been issued, it is very possible that any agreement to this clause or any payment under it, is a violation of law.

Practically, paragrapn C. is unacceptable even if legal. There is no limit on any expense incurred. The cost to the board could be enormous if only a portion of teachers sought reimbursement for their expenses. In these days of tight budgets, some even requiring the layoff of teachers, this doesn't seem to be in the best interests of anyone.

Article XXVI, *Extended Leaves of Absence*

A. Association
The Board agrees that up to ( ) teachers designated by the Association shall, upon request, be granted a leave of absence without pay for up to ( ) year(s) for the purpose of engaging in activities of the Association or its affiliates.

B. International and Federal Programs
A leave of absence without pay of up to ( ) years shall be granted to any teacher who joins the Peace Corps, VISTA, National Teachers Corps, or serves as an exchange teacher or overseas teacher, and is a full-time participant in either of such programs, or accepts a Fulbright Scholarship.

C. Outside Teaching
A teacher on tenure shall be granted a leave of absence without pay for up to ( ) years to teach in an accredited college or university, private school or other public school district.

D. Military
Military leave without pay shall be granted to any teacher who is inducted or enlists in any branch of the armed forces of the United States for the period of said service and three (3) months thereafter, or three (3) months after recovery of any wound or sickness at time of discharge. A similar leave shall be granted to the spouse of any teacher who is so inducted or who enlists to join him for the period of special training in preparation for duty overseas in combat zones.

In consideration of the extended leaves of absence demanded in Article XXVI, it should be noted that most of these leaves are for periods of time without pay. The board must bear in mind that future demands in this area will probably be for a certain percentage of pay for these leaves. Thus, while such leaves might not appear to be a cost item at this time, they might become so in the future.

The granting of any of the leaves in this area, other than sick leave, should be upon application to the superintendent for approval unless the board specifically provides otherwise.

E. Maternity

1. Natural Birth
The Board shall grant maternity leave without pay to any teacher upon request subject to the following stipulations and limitations:

(a) Maternity leave shall commence and terminate, on the date requested by the teacher.

(b) Any teacher granted maternity leave without pay according to the provisions of this section may at her discretion elect to substitute all or any part of her accumulated sick leave in lieu thereof and receive full pay and benefits for the same.

(c) Any teacher granted maternity leave shall at her request be restored to the exact same teaching position, subject area, and grade level vacated at the commencement of said leave.

(d) No teacher shall be required to leave work because of pregnancy at any specific time prior to expected childbirth nor be prevented from returning to work after childbirth solely on the ground that there has not been a time lapse of specific duration between childbirth and the desired date of return.

(e) The Board shall not remove any teacher from her duties during pregnancy unless the teacher cannot produce a certificate from her physician that she is medically able to continue teaching.

(f) The Board shall not discriminate against any person in violation of N.J.S.A. 10:5-1 et. seq., The Law Against Discrimination, nor in violation of the Constitutions of the State of New Jersey and of the United States.

We earlier devoted a new article to the topic of maternity and child-rearing leaves. This is a changing topic. You can avoid problems by understanding the current state of the law.

One problem arises because of misunderstandings over the phrase "maternity leave". We have confused pre- and post- childbirth periods of illness with a longer period of child-rearing. Conformance of your contract with the law should be key board goals in bargaining.

Boards may or may not agree that child-rearing leave has positive benefits for the district. In any event, there is no legal requirement that you agree to an extended leave of absence for child-rearing purposes.

Although there have been a number of critical decisions over the past five years, perhaps the most important remains the **Miller v. Pequannock** decision. A brief summary of that decision follows:

2. Any teacher who does not elect to take a maternity leave may continue to perform her duties as long as physically able to do so and will be entitled to return to her duties when her physician certifies that she is physically able to do so. The period of such absence will be deemed the same as for any other physical disability and she will be entitled to her annual and accumulated sick leave with pay during the period of absence.

1. A board may not maintain any policy for removal of a teacher from her teaching duties based solely on the fact that she is pregnant. Nor may a board remove a teacher from her duties based solely on a specific number of months of pregnancy or a specific number of months after childbirth. Each teacher must be treated on an individual basis.

2. A board may remove a pregnant teacher from her teaching duties if her teaching performance substantially declines, if she becomes physically incapacitated, or for other just cause. But the board can only do so if it removes other teachers who are unable to adequately perform his or her duties because of other physical conditions.

The board may require the teacher to produce a doctor's certificate indicating she is physically able to continue her duties. The board may require the teacher to undergo a physical by a doctor it appoints. If there is disagreement between doctors, a third neutral doctor appointed by a county medical society or by the two doctors themselves can issue a final, binding opinion.

Any such procedure must be applied to all teachers with differing incapacities.

3. A board must grant leaves of absence for medical reasons associated with pregnancy and birth on the same terms and conditions governing leaves of absence for other illness or medical disability.

4. Even if a board has contractually agreed to child-rearing leave, it need not grant or extend child-rearing leave for a teacher beyond the end of the school year in which leave is granted.

5. Beginning and ending dates for pregnancy and childbirth-related illness and disability leaves and reasonable requests for extensions in leave time must be granted so long as they can be medically substantiated (and as long as other types of illness and physical disability leaves also require medical substantiation).

6. Leave prior to and following illness or disability leave (we are not now speaking of long-term child-rearing leave) should be granted as long as such leave does not substantially interfere with the administration of the school.

For example, a teacher requests leave beginning September 15th

with childbirth anticipated on December 1st. It is possible that a board directive that if such leave is granted it must begin on September 1st would be upheld because the board is seeking to avoid the disruption of a teacher teaching two weeks and then leaving for an extended period of time.

7. A teacher returning from pregnancy and childbirth-related illness and disability leaves is entitled to all benefits to which teachers returning from other types of illness and disability leaves would be entitled.

2. Adoption

Any female teacher adopting an infant child shall receive similar leave which shall commence upon her receiving *de facto* custody of said infant, or earlier if necessary to fulfill the requirements for the adoption. No teacher on maternity leave shall, on the basis of said leave, be denied the opportunity to substitute in the School District in the area of her certification or competence.

E.2. Adoption differs from pregnancy-related disability and sickness. It is akin to child-rearing leave. There is no obligation to agree to adoption leave. This clause is discriminatory in that it applies only to female teachers.

F. Illness in Family

A leave of absence without pay of up to ( ) year(s) shall be granted for the purpose of caring for a sick member of the teacher's immediate family. Additional leave may be granted at the discretion of the Board.

Any time the board agrees to the phrase "immediate family" in the contract, it should be sure to clearly define who is included in that relationship.

G. Political

The Board shall grant a leave of absence without pay to any teacher to campaign for or serve in a public office, or to campaign for a candidate for a public office other than himself.

H. Good Cause

Other leaves of absence without pay may be granted by the Board for good reason.

I. Return from Leave

1. Salary

Upon return from leave granted pursuant to this ARTICLE, a teacher shall be considered as if he were actively employed by the Board during the leave and shall be placed on the salary schedule at the level he would have achieved if he had not been absent.

I.1. There is no requirement that credit for teaching be given during periods of extended leave without pay.

2. Benefits

All benefits to which a teacher was entitled at the time his leave of absence commenced, including unused accumulated sick leave and credits toward sabbatical eligibility, shall be restored to him upon his return, and he shall be assigned to the same position which he held at the time said leave commenced, if available or, if not, to a substantially equivalent position.

J. Extension and Renewals

All extensions or renewals of leaves shall be applied for and granted in writing.

Article XXVII, *Sabbatical Leaves*

A. Purpose

A sabbatical leave shall be granted to a teacher by the Board for study, including study in another area of specialization, for travel, or for other reasons of value to the school system.

B. Conditions

Sabbatical leave shall be granted, subject to the following conditions:

Some boards have agreed to sabbatical leave clauses believing they had limited their liability. The most common approach was to substitute the word "may" for "shall" in B. However, several arbitrators have been faced with disputes over this recently. All have stated that economic problems faced by the board do not, in themselves, allow the board to deny sabbaticals when all other conditions have been met. For more on this see the

July, 1978 issue of "Negotiations News" in "Educational Governance" in the center of School Leader.

1. Percentage of teachers
If there are sufficient qualified applicants, sabbatical leaves shall be granted to a mimimum of (%) percent of teachers at any one time.

B.1. presents real difficulties. Rather than use the phrase "minimum of" or, even, "maximum of" it would be wiser to select a fixed figure for each contract year.

Generally, this list of "Conditions" does not give clear power of review to the district in order to make the determination of whether the leave had "value to the school system". This clause would place determinations of this type directly in the hands of an arbitrator.

2. Requests
Requests for sabbatical leave must be received by the superintendent in writing in such form as may be mutually agreed on by the Association and the superintendent, no later than January 1, and action must be taken on all such requests no later than February 1, of the school year preceding the school year for which the sabbatical leave is requested.

3. Minimum time to qualify
The teacher has completed at least seven (7) full school years of service in the School District,

4. Pay
A teacher on sabbatical leave (either for one-half (½) of a school year or for a full school year) shall be paid by the Board at (%) percent of the salary rate which he would have received if he had remained on active duty if said leave is for study and at (%) percent if for travel or other reason.

5. Return
Upon return from sabbatical leave, a teacher shall be placed on the salary schedule at the level which he would have achieved had he remained actively employed in the system during the period of his absence and he shall be credited with all other benefits for which he would have entitled during the period of his leave and continuing thereafter upon his return.

Article XXVIII, *Professional Development and Educational Improvement*

The question of the board agreeing to make certain payments in connection with this article would be an appropriate subject for collective negotiations under the law.

A. Purpose
In our rapidly changing society teachers must constantly review curricular content, teaching methods and materials, educational philosophy and goals, social change and other topics related to education. The Board recognizes that it shares with its professional staff responsibility for the upgrading and updating of teacher performance and attitudes. The Board and the Association support the principle of continuing training of teachers and the improvement of instruction. The parties further agree that each teacher should fulfill the obligation for professional improvement in ways that best serve his own problems, functions, interests, and needs.

There is no need for A. Moreover, the second and fourth sentences are probably illegal in light of Ridgefield Park.

B. Assistance for Teachers
Within any one (1) week, a teacher who shall so request shall be granted at least thirty (30) minutes of counseling with his immediate superior. Such meetings shall be scheduled within the teacher work day and the teacher released from other duties therefor.

Paragraph B. provides for further reduction in the time a teacher might spend with students. Certainly such time can be found, without contract language, during preparation periods or, for elementary teachers, immediately after school. As professionals in other areas regularly expect to devote additional time to their profession beyond an eight hour day so should teachers.

C. Programs

The Board agrees to implement the following at the beginning of the 19 - school year.

1. Pay and expenses for required training

To pay the full cost of tuition and other reasonable expenses incurred in connection with any courses, workshops, seminars, conferences, in-service training sessions, or other such sessions which a teacher is required and/or requested by the administration to take. Said teacher shall also be compensated for all time spent in actual attendance at said sessions beyond his regular working day and year at his regular rate as defined in ARTICLE VII, Section A, paragraph 4 of this Agreement.

2. Professional Development Committee for reimbursement

a. To establish a Professional Development Committee to act upon requests from teachers for authorization to attend courses, workshops, seminars, conferences, in-service training sessions or other such sessions. Within ( ) days after signing this Agreement, the superintendent and the president of the Association shall each appoint ( ) members to the Committee and they shall select a chairman from among themselves. The superintendent and the president of the Association may, from time to time, replace members appointed by them.

b. To pay the reasonable expenses (including fees, meals, lodging and/or transportation) incurred by teachers who attend such sessions with the approval of the Professional Development Committee.

If the committee under C.2. is entrusted with determinations of the value of various in-service and professional development courses or programs, this is probably an illegal subject.

3. In-service workshops, conferences, programs

a. The Board shall provide in-service professional improvement programs which shall be cooperatively planned in the instructional council to meet priorities jointly determined by the Association and the administration. In-service programs shall be conducted during the in-school teacher workday if teacher attendance is required. All programs conducted during the summer shall be voluntary and compensated at the rate set forth in ARTICLE VII, Section A, paragraph 4.

b. Teachers who participate in an in-service program shall be given credit for each program as provided in schedule D.

Ridgefield Park would seem to make the first sentence of C.3.a. an illegal subject. The balance of a. and all of b. relate to terms and conditions of employment.

4. Professional library

To expend up to ($) dollars per teacher each school year to purchase books, equipment and/or other educational resource materials, as may be recommended by the aforementioned Professional Development Committee for use by the professional staff for professional development and educational improvement. The Board shall provide adequate space for housing said books and materials in convenient and readily accessible locations.

C.4. is not a required subject of bargaining.

Unlike four or five years ago, teacher unions show little or no interest in clauses like this.

5. Recruitment

To establish a Recruitment Committee to study and improve teacher recruitment. This Committee shall develop ways to utilize incumbent teachers who agree to be recruiters. The superintendent and the president of the Association shall each appoint ( ) members to this Committee and they shall choose a chairman from among themselves. Teachers who participate as members of this Committee shall suffer no loss of compensation and shall be reimbursed for any travel and expenses incurred in the performance of their functions.

C.5. This is not a term and condition of employment but is a major educational policy function and is, therefore, an illegal area.

6. Summer program for professional development

To appropriate ($) dollars for a Voluntary Summer Program for Professional Development to afford teachers the opportunity to participate in activities which they propose and which shall contribute to the professional development of the participating teacher and to the educational advantage of the children served by the District. Participation in this program shall take place for a period of not more than one (1) month during July and/or August and participants shall be remunerated on a prorated basis, according to their monthly salary for the school year beginning July 1 of the summer employed.

a. Teachers may apply for this program no later than . Applications shall be submitted to a Screening Committee consisting of ( ) members selected by the superintendent and ( ) members selected by the Association. The Committee shall receive, review, and approve or disapprove applications. All applicants shall be notified no later than May 1 of each year as to whether their applications have been approved.

b. The funds appropriated for this program shall be used to finance projects evaluated by the Screening Committee as fulfilling the objectives of the program.

c. The Screening Committee shall establish its own rules of procedure.

7. Innovative grants

To appropriate ($) dollars to establish a grant program to make funds available to teachers interested in designing and implementing innovative educational ideas and techniques.

a. The aim and purpose of this Section shall be to encourage creative and inno-

vative teachers to experiment in order to better meet the educational needs of the students of the School District.

b. An Innovative Review Committee consisting of ( ) members appointed by the superintendent and ( ) members appointed by the Association shall be established no later than October 1, 19 . Said Committee shall receive, review, and approve or disapprove applications for grants. Applications for grants shall be submitted no later than and awards shall be announced no later than

c. No individual grant under the terms of this Section shall exceed ($) dollars.

d. The Innovative Review Committee shall establish its own rules of procedure.

8. Experimentation

a. The Association and the Board have a mutual responsibility to promote better instruction. The Board welcomes Association participation in all aspects of strengthening the education program to best meet the needs of the students, the schools, and the community.

b. The Association may participate in any aspect of an experimental or other project or program. Such participation shall include, but not be limited to, all phases of proposals, inquiry, study, research, deliberations, recommendations, implementation, evaluation, and adoption. Any aspect of an experimental program which would affect the terms and conditions of teacher employment shall be negotiated with the Association before implementation.

C.8.a. is a general goal statement and should be rejected.

C.8.b. should be read carefully. The implications of this clause are obvious. With respect to any committee set up, whether or not under contract, boards might consider if the union represents all the teachers. The reliance solely on the union for committee membership and input could isolate the administration and the board from important numbers of teachers.

The new T & E obligations of boards require broad participation of teaching staff members and the community. No contractual agreement should limit that participation.

4. through 8. are almost never contained in contracts.

Article XXIX, *Supervision of Student Teachers*

A. Mutual Responsibility

There is a continuing need for the recruitment of able teacher candidates and for the improvement of their preparation. Teachers enlisted to teach in any situation must be provided an education based on the best academic preparation supplemented with numerous planned experiences which can provide a working understanding of the students and classroom with which teachers must function effectively. Through the cooperation of the School District and the Association, the student teacher is provided with the setting to apply the professional knowledge and skills, theories, and philosophies which have been developed through college courses and related experiences. The Board and the Association accept the joint responsibility to prepare teachers and to provide student teachers with direct field experiences in the School District that are relevant to the teaching act.

B. Procedures

The following procedures shall govern the supervision of student teachers:

1. Teaching experience

No teacher shall have a student teacher under his supervision unless said teacher has had at least three years of teaching experience, with the most recent year in his present position.

2. Voluntary participation

Supervision by a teacher of a student teacher shall be voluntary. Each teacher shall be polled prior to any school year for willingness to participate in the student teaching program, but this shall not be construed as acceptance of any particular student teaching assignment.

3. Academic record of student teachers

Prior to the assignment of student teachers, the superintendent shall request each prospective student teacher to provide prospective cooperating teachers a transcript of college courses and grades to date, statements relative to his academic proficiency from not fewer than ( ) of his college instructors, and a statement from his college assessing his potential strengths and weaknesses as exhibited in any previous field experiences or related training programs in classroom procedures or student relationships.

4. Consent

Each prospective cooperating teacher may accept or reject any student teacher. The teacher shall receive the request to take a student teacher at least ( ) weeks prior to the student's introduction to the classroom.

5. Released time

Each cooperating teacher shall be provided with released time with pay for attendance at

Consultation in the area of student teacher supervision seems desirable. Control of that program either by individual teacher or by the union does not. Almost no district in the State has negotiated on this topic.

The control over student teaching programs by the union through negotiated agreement is illegal. Certain provisions of this article do relate to teachers' terms and conditions of employment and are required subjects.

Given Ridgefield Park, it would appear that the following provisions are illegal: B.1., B.2., B.3., B.4., B.7., B.8., B.9.b., B.10., B.11., B.12.a. and b. and B.13. Those governing terms and conditions would seem to be: B.5., B.6., B.9.a. and B.12.c.

Some of the illegal matters are simply not terms and conditions of employment of the teacher (such as B.11., already covered by State law; it does not directly affect a teacher's working conditions). Others go to major educational policy-making (such as B.7.).

regularly scheduled orientation and evaluation sessions sponsored by a student teacher's college or university.

6. Assignments

A cooperating teacher shall not involuntarily be given additional assignments outside of his regular responsibilities during the period he is supervising a student teacher.

7. Assuming responsibilities

The cooperating teacher and the student teacher shall assess the latter's readiness to assume teaching responsibilities and the cooperating teacher shall have authority for determining in what degrees those responsibilities shall be assumed.

8. Explanation of school personnel responsibilities

The superintendent, or his designee, shall arrange for other school personnel, including teachers, principal, remedial instructors, guidance counselors, curriculum coordinator, school psychologist, school nurse, and school social worker to assist the cooperating teacher in providing an understanding of their roles for the student teacher.

9. Materials and supplies

a. Upon request, a cooperating teacher shall be provided with a duplicate copy of all instructional materials and teacher manuals for use by the student teacher assigned.

b. Upon request, a cooperating teacher shall be provided with those school records which he feels necessary for an understanding of the field experience by the student teacher. Upon completion of the field experience, the cooperating teacher shall arrange with the student teacher for the return of all such copies of student records.

10. Eligibility to teach

A student teacher shall be permitted to teach unsupervised only in areas for which he will be eligible for certification and only after the approval of the cooperating teacher.

11. Substitution

In accordance with State regulations, a student teacher can not be used as a substitute teacher.

12. Information for cooperating teachers

The superintendent, or his designee, shall arrange for each cooperating teacher to be provided in writing with the following in accordance with college procedures:

a. Information about the student teacher, such as his background, college record, interests, talents, and special problems of which the cooperating teacher and school administrator should be aware.

b. Information about the college program and the college's expectations and requirements for student teachers.

c. Specific information about the date the student will begin the assignment, when he will complete the assignment, and holidays or special events which affect the student teacher's attendance.

13. Orientation

Prior to the commencement of the student teaching experience, the superintendent shall request that the prospective student teacher visit the School District for appropriate orientation by the superintendent or his designee and the cooperating teacher.

Article XXX, *Protection of Teachers, Students and Property*

A. Unsafe and Hazardous Conditions

Teachers shall not be required to work under unsafe or hazardous conditions or to perform tasks which endanger their health, safety, or well-being.

The topic of employee safety is a required subject. Recent discussions of violence against teachers should spur interest in this subject area.

With respect to the remaining paragraphs in Article XXX, Title 18A of the New Jersey law imposes certain specific requirements and liabilities on the board. It should be emphasized again that the attempt to paraphrase the law, sections of the law, or intentions of the law, should not be agreed to. If it is deemed necessary to discuss or to quote the law, it must be done verbatim. Due to this aspect of this particular demand, the board should, with its attorney, carefully consider this specific proposal. More specifically, the terms unsafe or hazardous conditions which endanger "health safety or well being" is conspicuously vague. Does the lack of

air conditioning endanger well being? It is important to note grievances may arise from such a provision and decisions flowing from such grievances may be beyond the ability of the board to comply without the expenditure of vast sums of money.

B. Procedure for Hazardous Conditions

When the Association makes a determination on a district-wide basis or a Faculty Council, as heretofore established in ARTICLE XXII, determines on a building basis that conditions are unsafe or hazardous for the health, safety, or well-being of students and teachers, the following conditions shall be established and exist until rescinded by the same body:

1. Meetings

In the event of any disorder or disruption in the regular school program, the Board, superintendent or affected building principals shall meet with the Association immediately on request of the Association to develop mutually acceptable programs to guarantee the safety of students, teachers, and property.

2. Association representatives

Representatives of the Association shall be allowed free access to buildings and teachers until conditions are no longer unsafe and hazardous.

3. Closings

The Association shall be consulted and be allowed to submit recommendations for consideration before any judgment is made to open or close school.

B.1. and 3. are restrictions upon the board which, themselves, could have tragic consequences if literally followed. There is no time during a bomb threat to negotiate with the union. The union negotiator might reply, "We obviously don't mean in that situation." The board has the obligation to protect students. It should not bind itself in any way which might endanger students or which might subject the board to arbitration because it or its administrative personnel sought to protect students and employees.

4. Unauthorized visitors

During said unsafe and hazardous period, persons not employed by the School District shall not be allowed into any school without the knowledge and permission of the senior faculty representative in a building. This shall apply to students visiting a school other than where they are assigned.

C. Reasonable Force

As specified in 18A:6-1, a teacher may, within the scope of his employment, use and apply such amount of force as is reasonable and necessary: To quell a disturbance threatening physical injury to others; to obtain possession of weapons or other dangerous objects upon the person or within the control of the pupil; for the purpose of self-defense; and for the protection of persons or property.

D. Action before Board or Commissioner

Whenever any action is brought against a teacher before the Board or before the Commissioner of Education of the State of New Jersey which may affect his employment or salary status, the Board of Education shall reimburse him for the cost of his defense if the action is dismissed or results in a final decision in favor of the teacher.

E. Assault

1. Legal assistance

The Board shall give full support including legal and other assistance for any assault upon the teacher while acting in the discharge of his duties.

2. Leave

When absence arises out of or from such assault or injury, the teacher shall be entitled to full salary and other benefits for the period of such absence but shall not forfeit any sick leave or personal leave.

3. Reimbursement for personal property damage

The Board shall reimburse teachers for the reasonable cost of any clothing or other personal property damaged or destroyed as a result of an assault suffered by a teacher while the teacher was acting in the discharge of his duties within the scope of his employment.

4. Medical

The Board shall reimburse a teacher for the cost of medical, surgical or hospital services incurred as the result of any injury sustained in the course of his employment.

E.1. through 4. would be acceptable if they stipulated that such injury or legal proceeding was not determined to be the fault of the teacher.

5. Workmen's Compensation

Benefits derived under this or subsequent Agreements shall continue beyond the period of any Workmen's Compensation until the complete recovery of any teacher when absence arises out of or from assault or injury.

F. Reporting Assaults

1. Principal or immediate superior

Teachers shall immediately report cases of assault suffered by them in connection with their employment to their principal or other immediate superior.

2. Superintendent

Such notification shall be immediately forwarded to the superintendent who shall comply with any reasonable request from the teacher for information in the possession of the superintendent relating to the incident or the persons involved, and shall act in appropriate ways as liaison between the teacher, the police, and the courts.

F.2. access to confidential student records is not a term and condition of employment and, therefore, an illegal subject.

G. Nurse

A school nurse shall be scheduled to be in each building for the entire school day as heretofore defined in ARTICLE VII, Section A of this Agreement.

Paragraph G. deals with a demand that requires the board to negotiate the scheduling of nurses. The board must insist that such a question, is a matter for it to determine unilaterally. It represents a basic policy question and is not an item to be included in the terms and conditions of employment. N.J.S.A. 18A:40-1 et seq. prescribes the board's duties with respect to scheduling school nurses.

Article XXXI, *Maintenance of Classroom Control and Discipline*

A. Definition of Responsibilities

A definition of the duties and responsibilities of all administrators, coordinators, supervisors and other personnel pertaining to student behavior shall be reduced to writing by the superintendent and presented to each teacher at the start of each school year.

The board must retain the ultimate responsibility for the maintenance of control and discipline in the classroom. This is not an item that can be delegated to committees and it should not be negotiated.

The board may want to arrange for the use of a committee to provide suggestions and advice on this topic.

B. Special Assistance

When, in the judgment of a teacher, a student requires the attention of the principal, assistant principal, a counselor, psychologist, physician or other specialist, he shall so inform his principal or immediate superior. The principal or immediate superior shall arrange as soon as possible for a conference among himself, the teacher, and an appropriate specialist to discuss the problem and to decide upon appropriate steps for its resolution.

C. Disruptive Students

When, in the judgment of a teacher, a student is by his behavior seriously disrupting the instructional program to the detriment of other students, the teacher may exclude the student from the classroom and refer him to the principal. In such cases the principal shall arrange as soon as possible, and under normal circumstances not later than the conclusion of the following school day, a conference among himself, the teacher and possibly an appropriate specialist to discuss the problem and to decide upon appropriate steps for its resolution. If the teacher in question objects to the proposed readmission of said student to the classroom, the matter shall, within twenty-four (24) hours after the decision by the principal, be referred to an ad hoc committee consisting of two (2) members appointed by the principal, two (2) members appointed by the teacher and a fifth (5th) member, who shall act as chairman, appointed by the other four (4) members. Said committee shall consult with the teacher, the principal, and other appropriate professional and/or lay persons, including the student's parents and/or guardians, and shall render a final decision in the matter within ( ) days after the conclusion of such consultation.

D. Student Behavior Committee

As soon as possible after the execution of this Agreement, a joint Student Behavior Committee (consisting of ( ) members appointed by the superintendent and ( ) members appointed by the Association) shall be established to develop appropriate guidelines to be used by teachers in handling disruptive students and to develop constructive programs for disruptive students whose presence in regular classes represent unusual problems for the regular learning process. Recommendations shall be submitted to the Instructional Council established pursuant to ARTICLE XXIII of this Agreement.

E. Building Procedures

An appropriate student disciplinary procedure shall be developed for each school building by its Liaison Committee (established pursuant to ARTICLE XXII of this Agreement). Said procedure shall be submitted to the building faculty for approval prior to its implementation.

F. Expanded Involvement

Nothing in this ARTICLE pertaining to the development of guidelines and procedures by the Student Behavior Committee or each school's Liaison Committee shall be interpreted to prevent these committees from consulting or adding to their number such

additional teachers, professional advisors, parents, students, or other persons as the original members herein designated shall determine are desirable and appropriate for said purposes.

Article XXXII, *Insurance Protection*

A. Full Health-Care Coverage

As of the beginning of the 19 - school year, the Board shall provide the health-care insurance protection designated below. The Board shall pay the full premium for each teacher and in cases where appropriate for family-plan insurance coverage.

1. Provisions of coverage

Provisions of the health-care insurance program shall be detailed in master policies and contracts agreed upon by the Board and the Association and shall include:

a. Hospital room and board and miscellaneous costs
b. Out-patient benefits
c. Laboratory fees, diagnostic expenses, and therapy treatments
d. Maternity costs
e. Surgical costs
f. Major-medical coverage

2. Carrier(s)

The health insurance carrier(s) shall be for the basic hospitalization and medical-surgical coverage, and for the major-medical coverage.

3. Special program(s) and carrier(s)

In addition to the above stated program, provision shall be made to provide the following health programs:

a. Prescription drug costs
b. Dental care
c. Optical care

The Board shall make full payment for the services listed above in this paragraph with a carrier(s) approved by the Association.

4. Complete annual coverage

For each teacher who remains in the employ of the Board for the full school year, the Board shall make payment of insurance premiums to provide insurance coverage for the full twelve (12) month period commencing September 1st and ending August 31st. When necessary, payment of premiums in behalf of the teacher shall be made retroactively or prospectively to assure uninterrupted participation and coverage.

B. Retirement Coverage

The Board shall provide for continuance of health-care insurance after retirement on the terms detailed in the master policies and contracts agreed upon by the Board and the Association.

C. Description to Teachers

The Board shall provide to each teacher a description of the health-care insurance coverage provided under this ARTICLE, no later than the beginning of the 19 - school year, which shall include a clear description of conditions and limits of coverage as listed above.

D. Washington National Meetings

The superintendent shall permit representatives of the NJEA Washington National Income Protection Plan to meet with teachers for the purpose of enrolling new members and permitting present members to adjust their coverages at faculty meetings on a district or building level at the request of the Association. Requests for such meetings shall be made no more than once a year. It is agreed that the Washington National representative shall be permitted a minimum of twenty (20) minutes for the meeting.

The board might properly negotiate the amount of insurance for employees and the kind provided. But it is generally wiser for boards to avoid negotiating the actual carrier(s) of this insurance. The board might desire to place the proposal out for bids and negotiating an actual carrier would restrict this.

The board should consider negotiating the "cost" of insurance programs rather than the "benefits" itself. For example, propose that the board pay the same amount in dollars that it paid for insurance in the previous school year. This would prevent the Board's automatic assumption of increasing insurance costs.

If it is agreed that Washington National representatives may conduct meetings in the school, such meetings should not constitute one of the meetings provided elsewhere in the contract. There is no reason why it should constitute a "faculty meeting." Because Washington National is, in effect, a subsidiary of NEA, it is advisable to allow meetings only outside of the school day. Certainly, teachers should not be compensated for their voluntary attendance at this meeting.

Article XXXIII, *Personal and Academic Freedom*

A. Personal
The personal life of a teacher is not an appropriate concern or attention of the Board except as it may directly prevent the teacher from performing properly his assigned functions during the workday.

B. Citizenship
Teachers shall be entitled to full rights of citizenship, and no religious or political activities of any teacher or the lack thereof shall be grounds for any discipline or discrimination with respect to the professional employment of such teacher, providing said activities do not violate any local, state or federal law.

C. Academic
The Board and the Association agree that academic freedom is essential to the fulfillment of the purposes of the School District, and they acknowledge the fundamental need to protect teachers from any censorship or restraint which might interfere with their obligation to pursue truth in the performance of their teaching functions. Accordingly, they agree as follows:

1. Controversial material
Teachers shall be guaranteed full freedom in classroom presentations and discussions and may introduce politically, religiously or otherwise controversial material, provided only that said material is relevant to the course content.

2. Personal opinion
In performing their teaching functions, teachers shall be guaranteed full freedom in expressing their personal opinions on all matters relevant to the course content, provided, however, that when they do so they shall make every effort to indicate that they are speaking personally and not on behalf of the school, its administration, or the Board.

3. Censorship
Teachers shall not be censored or restrained in the performance of their teaching functions on the ground that the material discussed and/or opinions expressed are distasteful or embarrassing to those in authority in the school system or detrimental to school or school system public relations.

Article XXXIV, *Books and Other Instructional Materials and Supplies*

A. Purpose
The Board shall allocate sufficient funds to provide for the purchase and/or replacement of textbooks, library books, instructional materials, supplies and equipment of sufficient quality and quantity to enable teachers to properly fulfill their teaching responsibilities. Specifically, the Board agrees that during the 19 - school year it shall provide the following allocations:

1. Per pupil costs
Funds for instructional materials and supplies shall be increased by not less than ($) dollar(s) per pupil for kindergarten through sixth grade and by not less than ($) dollar(s) per pupil for seventh grade through twelfth grade. Teachers purchasing materials and/or supplies with the advance approval of their principal or immediate superior shall be reimbursed upon submission of an appropriate receipt of purchase.

2. Home instruction
($) dollars per home instructor shall be used to purchase additional materials and supplies necessary in carrying out the instructional program. Such teachers shall be reimbursed up to said amount upon submission of an appropriate receipt of purchase.

3. Petty cash
A Petty Cash Fund shall be established in each building for use in purchasing incidental supplies for classroom instructional use. Expenditures from this fund shall be at the discretion of the teacher. The teacher shall be reimbursed upon presentation of a paid receipt for such expenditures to the principal, up to the following maximums.

a. Secondary schools – ($) dollars per teacher per month

b. Elementary schools – ($) dollars per teacher per month

While it should not be the board's intention to in any way deprive a teacher of any of the rights that an individual, or an individual in the capacity of a teacher, is provided as a matter of law, this type of clause in the contract would be an inappropriate matter for the purpose of collective negotiations.

It should be noted, however, that the provision of this demand contained in paragraph A, which states that the personal life of a teacher is not an appropriate concern of the board, is not a sufficiently clear statement. The board must have a definite and distinct interest in the personal life of a teacher as it might bear upon his or her suitability for teaching in the district.

Further litigation will determine whether academic freedom is a term and condition of employment or whether its protection is more nearly an issue of major educational policy. In any event, constitutional freedoms of public school employees can and have been protected outside the confines of the negotiated agreement.

In June, 1978, PERC ruled that teachers had no right to use students as messengers for union notices to parents. The decision would also apply to classroom discussion of the district labor disputes which are initiated by the teacher.

B. Review and Evaluation of Books and Materials

1. Procedure

An improved procedure for reviewing and evaluating books and other instructional materials and supplies shall be instituted as soon as possible after the effective date of this Agreement. Said procedure shall provide, among other things, for the following:

a. A separate committee shall be established to make recommendations for each subject area;
b. School-based teachers shall constitute a majority of each such committee;
c. A subject supervisor shall not be able to override the recommendations of such committee;
d. The recommendations of each such committee shall be published and distributed to all schools; and
e. The distinction between books adopted for system-wide use and those for which there is freedom for individual school and/or teacher choice shall clearly be defined.

2. Textbook Policy Committee

A Textbook Policy Committee (consisting of ( ) members appointed by the superintendent and ( ) members appointed by the Association) shall be established as soon as practicable to work out the mechanics of the aforesaid procedure so that it may be implemented by the beginning of the 19 - school year.

3. Pay and/or released time

Teachers serving on committees organized pursuant to this ARTICLE shall be provided with scheduled released time for this purpose and/or paid at the rate specified in ARTICLE VII, Section A, paragraph 4 of this Agreement, for time spent in excess of the regularly scheduled in-school work year or workday.

B.1. and 2. would appear to be illegal subjects. B.3. would be a required subject insofar as it related to a committee established by the board. The criteria for textbook selection may be eminently worthwhile but because this clause (c.) does not relate to a term and condition of employment, it is a prohibited subject for negotiations.

C. Standards for Materials

1. Criteria

Instructional materials used in the School District shall reflect the multi-ethnic nature of our society and shall evidence a sensitivity to prejudice, to stereotypes, and to materials offensive to minority groups, as measured by the following criteria:

a. The suggestion, by omission or commission or by over- or under-emphasis, that any racial, religious, or ethnic segment of the population is more or less capable or more or less important than any other in the mainstream of American life is to be avoided.
b. Opportunities for full, fair, accurate, and balanced treatment of minority groups should be utilized.
c. Recognition of minority groups by frequent placement in positions of leadership and centrality is necessary.
d. Both male and female members of minority groups should be depicted in situations which exhibit them as worthy examples of mature American citizens.
e. Attention should be given to the presentation of fully integrated human groupings and settings indicating equal status.
f. The group representation of individuals should be clearly apparent and the exclusive utilization of Caucasian facial features avoided in such representation where appropriate.
g. Broad-ranging, well-planned, and comprehensive materials which represent the contribution and achievements of minority groups in art, science, history, literature, and all other aspects of life and culture should be apparent in the design of materials.
h. Life in contemporary urban environments, as well as rural and suburban environments, should be pictured.

2. Materials Center

A materials center shall be maintained and charged with the responsibility of seeking multi-ethnic materials related to study units being taught. The center shall also develop and maintain a current list of resource centers and persons within and outside the community.

D. Testing

Achievement tests which are to be used by the School District for district-, school-, subject, or grade-wide purposes shall be approved in advance by the Instructional Council as heretofore established in ARTICLE XXIII of this Agreement. The Instructional Council shall consider the kind and type of test, the use to which a test is to be put, and the dissemination of the test results and any interpretation of those results.

D. This is an illegal subject.

Article XXXV, *Deduction from Salary*

A. Association Payroll Dues Deduction

1. The Board agrees to deduct from the salaries of its teachers dues for the Association, the County Education Association, the New Jersey Education Association or the National Education Association, as said teachers individually and voluntarily authorize the Board to deduct. Such deductions shall

There are only two mandatory requirements in the law with respect to deduction of dues for employee organizations. First, any one employee can have his dues deducted for only one grouping of employee

be made in compliance with Chapter 233 N. J. Public Laws of 1969 (NJSA 52:14-15.9e) and under rules established by the State Department of Education. Said monies together with current records of any corrections shall be transmitted to such person as may from time to time be designated by the Association by the 15th of each month following the monthly pay period in which deductions were made. The person designated shall disburse such monies to the appropriate association or associations.

2. Each of the associations named above shall certify to the Board, in writing, the current rate of its membership dues. Any association which shall change the rate of its membership dues shall give the Board written notice prior to the effective date of such change.

B. Local, State and National Services
The Board agrees to deduct from teachers' salaries money for local, state and/or national association services and programs as said teachers individually and voluntarily authorize the Board to deduct and to transmit the monies promptly to such association or associations. Any teacher may have such deductions discontinued at any time upon sixty (60) days' written notice to the Board and the appropriate association.

organizations, such as the local association, the NJEA, the NEA. Under no circumstances, can the teacher have dues deducted for two separate and distinct employee organizations, such as the AFT and NEA. The second mandatory feature of the law is the requirement that notice of withdrawal is effective on January 1 and July 1 next succeeding the date of which notice of withdrawal is filed.

Article XXXVI, *Miscellaneous Provisions*

A. Nondiscrimination
The Board and the Association agree that there shall be no discrimination, and that all practices, procedures, and policies of the school system shall clearly exemplify that there is no discrimination in the hiring, training, assignment, promotion, transfer, or discipline of teachers or in the application or administration of this Agreement on the basis of race, creed, color, religion, national origin, sex, domicile, or marital status.

Paragraph A. is an attempt to paraphrase and restate certain aspects of laws dealing with discrimination. It must again be emphasized that the board should not agree to the paraphrasing or restatement of the law. If indeed the law must be incorporated in the contract, it should be stated verbatim.

B. Board Policy
This Agreement constitutes Board policy for the term of said Agreement, and the Board shall carry out the commitments contained herein and give them full force and effect as Board policy.

Paragraph B. is a superfluous paragraph that simply states that the board must carry out the commitments contained in the contract and gives them the effect of board policy. It is, of course, the intention of the board, as well as the association, to adhere to the provisions of the contract. This paragraph should be deleted.

C. Savings Clause
Except as this agreement shall otherwise provide, all terms and conditions of employment applicable on the signing date of this Agreement to employees covered by this Agreement as established by the rules, regulations and/or policies of the Board Administrative procedures and practices in force on said date, shall continue to be so applicable during the terms of this agreement. Unless otherwise provided in this Agreement,nnothing contained herein shall be interpreted and/or applied so as to eliminate, reduce, or otherwise detract from any teacher benefit existing prior to its effective date.

Paragraph C. is not a "savings clause." (See commentary on Article IV, B. "*Statutory Savings Clause*" earlier). Rather, it is a clause which retains all possible benefits from any source to employees and is commonly called a past practice clause. This type of provision can be extremely detrimental to a board and should be avoided. If included in the agreement, the result would be to include by reference in the contract all pre-existing "rights" provided or presumed in statutes, policies, administrative decisions or even practices of individual administrative personnel. (See **Past Practices**, earlier.)

D. Separability
If any provision of this Agreement or any application of this Agreement to any employee or group of employees is held to be contrary to law, then such provision or application shall not be deemed valid and subsisting, except to the extent permitted by law, but all other provisions or applications shall continue in full force and effect.

These are standard clauses.

E. Compliance between Individual Contract and Master Agreement
Any individual contract between the Board and an individual teacher, heretofore or hereafter executed, shall be subject to and consistent with the terms and conditions of this Agreement. If an individual contract contains any language inconsistent with this Agreement, this Agreement, during its duration, shall be controlling.

F. Printing Agreement
Copies of this Agreement shall be printed at the expense of the Board after agreement with the Association on format within thirty (30) days after the Agreement is signed. The Agreement shall be presented to all teachers now employed, hereafter employed, or considered for employment by the Board.

G. Notice
Whenever any notice is required to be given by either of the parties to this Agreement to the other, pursuant to the provision(s) of this Agreement, either party shall do so by telegram or registered letter at the following addresses:

1. If by Association, to Board at
   (address)
2. If by Board, to Association at
   (address)

Article XXXVII, *Duration of Agreement*

A. Duration Period
This Agreement shall be effective as of **[Date of implementation]** and shall continue in effect until **[Date of expiration]**

[NOTE – In Agreements which extend for more than one (1) year and negotiations over fiscal matters are to be conducted annually, insert the phrase:
subject to the Association's right to negotiate each annual budget with negotiations commencing no later than October 1 of each year, under procedures defined in ARTICLE II, and . . .]

subject to the Association's right to negotiate over a successor Agreement as provided in ARTICLE II. This Agreement shall not be extended orally, and it is expressly understood that it shall expire on the date indicated, unless it is extended in writing.

B Status of Incorporation

Option 1 [For Unincorporated Local Association]

In witness whereof the parties hereto have caused this Agreement to be signed by their respective presidents, attested by their respective secretaries, and their corporate seals to be placed hereon, all on the day and year first above written.

ASSOCIATION	BOARD OF EDUCATION
By	By
Its President	Its Secretary
By	By
Its President	Its Secretary

Option 2 [For Unincorporated Local Assistance]

In witness whereof the parties hereto have caused this Agreement to be signed by president and secretary and the Board has caused this Agreement to be signed by its president, attested by its secretary and its corporate seal to be placed hereon, all on the day and year first above written.

ASSOCIATION	BOARD OF EDUCATION
By	By
Its President	Its Secretary
By	By
Its President	Its Secretary

If the contract is going to exist for a particular period of time, but certain specific items, i.e., salaries, are to be negotiated during the course of the duration of the remainder of the contract, it should be specifically so stated in a reopener clause. There should be no vagueness whatsoever with respect to these matters.